

TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1907

No. 102

12.30

STERLING E. HOLT, JOEL A. BAKER, THOMAS TAGGART,
GEORGE WOLF, WILLIAM A. BELL, AND CHARLES A.
STUCKMEYER, APPELLANTS.

vs.

THE INDIANA MANUFACTURING COMPANY.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR
THE DISTRICT OF INDIANA.

FILED NOVEMBER 1, 1907.

(16,713.)

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SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1897.

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GEORGE WOLF, WILLIAM A. BELL, AND CHARLES A.
STUCKMEYER, APPELLANTS,

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a

Chancery.

United States of America to the Indiana Manufacturing Company—
Jos. K. Sharp, sec'y—Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington, thirty days after the date hereof, pursuant to an appeal which has been allowed by the circuit court of the United States for the district of Indiana from its final decree in a suit wherein Sterling R. Holt, Joel A. Baker, Thomas Taggart, George Wolf, William A. Bell, and Charles A. Stuckmeyer are appellants and you are appellee, to show cause, if any there be, why the decree rendered against the said appellants, as in the said appeal —, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Hon. John H. Baker, judge of the district court of the United States for the district of Indiana and *ex officio* judge of said circuit court, this 1st day of October, in the year of our Lord one thousand eight hundred and ninety-seven.

[Seal Circuit Court of the United States, District of Indiana.]

JOHN H. BAKER, *Judge*.

b Received the within citation, at Indianapolis, October 21, 1897, & served the same as follows: On this 21 day of October, in the year of our Lord one thousand eight hundred and ninety-seven, by reading to & in the presence of J. K. Sharpe, sec'y of the within-name- Indiana Mfg. Company, & delivering a true copy of the within citation to said J. K. Sharpe, at Indianapolis, Oct. 21, 1897.

S. E. KERCHEVAL,
Per G. E. BRANHAM, *Deputy*.

Service.	2 00
2 folio copies.	20
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	2 20

Sworn to and subscribed the — day of —, A. D. 189—.

- 1 Pleas of the circuit court of the United States for the district of Indiana, begun and holden at the United States courthouse, in the city of Indianapolis, in said district, on the first Tuesday of November, in the year of our Lord one thousand eight hundred and ninety-five, before the Honorable John H. Baker, judge of the district court of the United States for the district of Indiana and *ex officio* judge of said circuit court.

THE INDIANA MANUFACTURING COMPANY }

v.

STERLING R. HOLT, JOEL A. BAKER, THOMAS Taggart, George Wolf, William A. Bell, and Charles H. Stuckmeyer. } No. 9066. Chancery.

Be it remembered that at the May term of said court, on the 13th day of July, 1894, before the Honorable William A. Woods and the Honorable John H. Baker, judges of said court, the following proceedings in the above-entitled cause were had, to wit :

Comes now the complainant, by Chester Bradford, Esq., its solicitor, and files its bill of complaint herein in the words following, to wit :

To the judges of the United States circuit court for the district of Indiana :

Your orator, The Indiana Manufacturing Company, a corporation duly created, organized and existing under and by virtue of the laws of the State of Indiana, and having its principal office and place of business at the city of Indianapolis in said State, brings this bill into this court against Sterling R. Holt, who is treasurer of Marion county, Indiana; Joel A. Baker, who is the assessor of Marion county, Indiana; Thomas Taggart, who is the auditor of Marion county, Indiana, and George Wolf, who is assessor of Center township in Marion county, Indiana; and all of whom are citizens of the State of Indiana, residing at Indianapolis in said State.

- 2 And thereupon your orator complains and says, that at the time for assessing taxes for the year 1892 it had and was possessed of tangible property and assets to the amount of \$5,000.00, and no more, and that it made due return of the same for taxation. That it was summoned to, and, by its secretary and treasurer, Joseph K. Sharpe, Jr., did, appear before the board of review of Marion county, Indiana, then composed of the said Joel A. Baker and Thomas Taggart, and one Victor M. Backus, who was then treasurer of Marion county, Indiana, in which office he has since been succeeded by the said Sterling R. Holt, and was examined touching the property of your orator, and that his evidence corresponded with the return before made by your orator, and showed that your orator was then possessed of but \$5,000.00 in tangible property. Said evidence further showed that your orator was possessed of certain "patents," or letters patent of the United States, then estimated to be worth enough to bring up the total assets of your orator to the amount of \$20,000.00, or, in other words, that said letters patent were worth the sum of \$15,000.00. Whereupon, the said board of

review, composed of the said Joel A. Baker, Thomas Taggart and Victor M. Backus, did inequitably, wrongfully, unlawfully and injuriously fix the assessment of your orator's property for purposes of taxation, because of your orator's ownership of said letters patent, as aforesaid, at the sum of \$20,000.00, or \$15,000.00 more than your orator was justly and properly assessable for, all in violation of the Constitution and laws of the United States under and by virtue of which the said letters patent are held by your orator, and in defiance of your orator's rights in the premises. Your orator further shows unto your honors that it has paid as taxes for the year 1892 the sum of \$95.00 to the said Sterling R. Holt, as treasurer, as aforesaid, and holds his official receipt therefore, which said receipt is ready here in court to be produced whenever required, which said sum of \$95.00 is in full of all taxes which were justly and lawfully chargeable to your orator for the said year, and is in full of all taxes assessed or levied upon all and singular its property and assets of every kind and description, with penalties, interest and costs, saving and excepting only the said letters patent of the United States. Notwithstanding which the said defendants, and particularly the said defendant Sterling R. Holt, are demanding a further large sum, to wit, the sum of \$284.94, as unpaid taxes for the year 1892, basing said demand upon the valuation and assessment of the letters patent of the United States as above set forth, and not otherwise; and are threatening to levy upon and distrain and seize and sell the property of your orator to pay the taxes so unlawfully demanded; all in violation of the Constitution and laws of the United States, and to the wrong and injury of your orator.

3 Your orator further shows unto your honors that at the time for assessing taxes for the year 1893 it had and was possessed of tangible property to the extent of \$8,900.00 and no more, and that it made due return of the same for taxation upon and by means of the regular statements and assessment-lists furnished for that purpose by the assessor, as by a duly authenticated copy of said statement and of said assessment-list ready here in court to be produced whenever required will more fully and at large appear. That the assessor demanded of your orator that the number and value of letters patent owned by your orator should be furnished to be placed upon said assessment-list, which said demand your orator submitted to, for the purpose of furnishing the said assessor the information which he desired, and thereupon said assessment-list was made to show and does show that your orator was at that time possessed of four letters patent of the United States of the value of \$25,000; but your orator denies that by furnishing the information aforesaid it admitted or agreed to the legality of assessing letters patent for taxation, or the validity or propriety of such assessment; and it now avers that it denies and always has denied the validity or legality of such or any assessment on account of any letters patent owned or held by it.

Your orator further shows unto your honors that the board of review, composed of the said Joel A. Baker, Thomas Taggart and Victor M. Backus, did inequitably, wrongfully, unlawfully and in-

juriously fix the assessment of your orator's property for purposes of taxation because of your orator's ownership of said letters patent as aforesaid, at the sum of \$36,000, or \$27,100 more than your orator was properly assessable for, all in violation of the Constitution and laws of the United States, and in defiance of your orator's rights in the premises. Your orator further shows unto your honors that it has paid as taxes for the year 1893 the sum of \$204.55 to the said Sterling R. Holt, treasurer, as aforesaid, and holds his official receipt therefor, which said receipt is ready here in court to be produced whenever required; which said sum of \$204.55 is in full of all taxes, with penalties, interest and costs thereon, which were justly and lawfully chargeable to your orator for the said year 1893, and is in full of all taxes levied or assessed upon all and singular its property and assets of every description, saving and excepting only the said letters patent of the United States. Notwithstanding which the said defendants, and particularly the said defendant Sterling R. Holt, as treasurer, as aforesaid, are demanding a further large sum, to wit, the sum of \$464.94, as unpaid taxes for the said year 1893, basing said demand upon the valuation of the letters patent of the United States as above set forth, and not otherwise; and are threatening to levy upon and seize and sell the property of your orator to pay the taxes so unlawfully and unjustly demanded; all in violation of the Constitution and laws of the United States, and to the wrong and injury of your orator.

4 And your orator further shows unto your honors that at the time for assessing taxes for the year 1894 it had and was possessed of tangible property and assets to the amount of \$7,645.00 and no more, and that it made due return of the same for taxation upon and by means of the regular statements and assessment-lists furnished for that purpose by the assessor, as by a duly authenticated copy of said statement and of said assessment-lists ready here in court to be produced whenever required will more fully and at large appear. That the assessor demanded of your orator that the number and value of letters patent owned by your orator should be furnished to be placed upon said assessment-list, which said demand your orator submitted to, and thereupon said assessment-list was made to show and does show that your orator was at the time possessed of four letters patent of the United States of the value of \$25,000.00, but your orator denies that by furnishing the information aforesaid it admitted or agreed to the legality of assessing letters patent for taxation or the validity or the propriety of such assessment; and it now avers that it denies and always has denied the validity or legality of such or any assessment on account of any letters patent owned or held by it. Your orator further shows that it was summoned to appear before the board of review of Marion county, Indiana, did so appear by its attorney and by its president and secretary on July 11, 1894, and did then protest against any assessment for taxation different from or greater than such as might be based upon its actual tangible property so owned by it as aforesaid; and that the evidence taken at that time shows that the return made in and by the aforementioned assessment-list was correct,

and that your orator is possessed of no other or further property than that shown in and by said assessment-list, except the letters patent aforesaid; and that the valuation placed upon its stock was because of the ownership of said letters patent and not otherwise, as by a duly authenticated copy of the proceedings of said board ready here in court to be produced will more fully and at large appear. Notwithstanding which the said board of review composed of the said defendants Sterling R. Holt, Thomas Taggart and Joel A. Baker, did inequitably, wrongfully, unlawfully and injuriously fix the assessment of your orator's property for purposes of taxation, because of your orator's ownership of said letters patent as aforesaid, at the sum of \$36,000.00 or \$28,355.00 more than your orator was possessed of in tangible property, or was properly or justly assessable for, all in violation of the Constitution and laws of the United States, under and by virtue of which the said letters patent are held by your orator, and to the wrong and injury of your orator.

Your orator further shows unto your honors that all taxes justly and legally due from your orator prior to those assessed in and for the year 1894 have been fully paid, as hereinbefore set forth, and that the taxes for the year 1894 are not yet due.

Your orator further shows unto your honors that at the time of paying the said taxes for the years 1892 and 1893, which taxes were paid to the said defendant Sterling R. Holt, in person, acting as such treasurer, as aforesaid, your orator did solemnly and formally protest against the unjust, inequitable, unlawful and wrongful assessment herein elsewhere complained of, and did make such payment as and for the full amount of all taxes properly or lawfully chargeable or assessable to your orator. And your orator further shows that at its first opportunity thereafter, to wit, on July 11, 1894, at a regular meeting of the board of review of Marion county, Indiana, composed of the said Sterling R. Holt, Thomas Taggart and Joel A. Baker, as aforesaid, your orator, by its attorney, did in due and proper form make motions to abate the unlawful, inequitable, unjust and wrongful taxes which had been assessed against it, which said motions were denied and not granted as by the proceedings before said board of review, or a duly authenticated copy thereof, here in court to be produced, will more fully and at large appear.

Your orator has obtained a copy of the statement for taxation of your orator for the year 1892; and also of the proceedings of the board of review for the year 1892 above referred to, so far as they relate to your orator, from the said Thomas Taggart, auditor as aforesaid, and who is also secretary of the said board of review, and certified under his hand as such auditor, and his official seal, which said copies are ready here in court to be produced whenever required.

Your orator has also likewise obtained a certified copy of the statement for taxation of your orator for the year 1893; and also a copy of the assessment-list of your orator for the year 1893; and also a copy of the proceedings of the board of review for the year

1893, so far as they relate to your orator; all of which are duly certified by the said Thomas Taggart, auditor as aforesaid, and who is also secretary of the said board of review, under his hand as such auditor, and his official seal, which said copies are ready here in court to be produced whenever required.

Your orator has also likewise obtained a certified copy of the statement for taxation of your orator for the year 1894; and also a copy of the assessment-list of your orator for the year 1894; and also a copy of the proceedings of the board of review for the year 1894 so far as they relate to your orator; all of which are duly certified by the said Thomas Taggart, auditor as aforesaid, and who is also secretary of the said board of review, under his hand as such auditor, and his official seal, which said copies are ready here in court to be produced whenever required.

Your orator further shows unto your honors that the originals of the above-described statements for taxation, proceedings of
6 the board of review, assessment-lists, and tax duplicates, are on file in the offices of said defendants in the court-house of Marion county, in the city of Indianapolis, Indiana, in the jurisdiction of this court, and in the official custody of such of said defendants, as usually have custody thereof, in their respective capacities as public officers, as above set forth.

And your orator further shows unto your honors that the defendant Sterling R. Holt is the treasurer of Marion county, Indiana, whose duty it is as such treasurer, under the laws of the State of Indiana, to receive and collect taxes for the said State of Indiana, and also for Marion county in said State, and also for the city of Indianapolis within said county. That a large proportion of the amounts received and collected by the said defendant as treasurer, as aforesaid, are for and on account of and for the benefit of the State of Indiana, a sovereign State, and one of the United States, and that under the Constitution and laws no suit can be maintained against the State of Indiana. That it is a part of the duty of the said defendant Sterling R. Holt, treasurer, as aforesaid, to pay over into the treasury of the said State of Indiana a large proportion of the amounts so received and collected by him as taxes, and, therefore, that if said amounts are so collected and received and paid over, they will become mixed with the moneys of said State, and thus be beyond reach of any process of this or any court, and irrecoverable, and that great and irreparable injury will result to your orator if such unlawful collection and paying over as aforesaid be not prevented.

And your orator further shows unto your honors that taxes amounting as aforesaid to a much larger amount than the amounts so paid for the years 1892 and 1893 have been pretended to be assessed against your orator upon the assessment and valuation of its property and assets, by reason of the inclusion therein of its letters patent of the United States as aforesaid, and so inequitably, wrongfully, unjustly, unlawfully and injuriously placed upon the property and assets of your orator, and that said pretended taxes have been

extended upon the tax duplicates of Marion county, Indiana, as aforesaid, and that such tax duplicates are now in the hands of the said defendant Sterling R. Holt, as such treasurer, and that the said defendants, and particularly the said defendant Sterling R. Holt, are claiming and asserting that the said several sums so extended on the said tax duplicates are delinquent taxes against your orator and its property under the provisions of the statutes of the State of Indiana under which they pretend to be acting, and that said defendants in their official capacities are threatening and intend to and will in supposed compliance with the requirements of the provisions of said statutes of the State of Indiana on that subject levy upon the property of your orator, and will proceed
7 to sell and distrain the same to pay and satisfy said sums so claimed to be due and delinquent, and if not enjoined from so doing; and that said defendants are threatening to collect such wrongful, unjust, illegal and void taxes by distraint and sale of the property of your orator, to the great and irreparable injury of your orator.

Your orator further shows unto your honors that notwithstanding the payments aforesaid of all the taxes justly and equitably due from your orator for the year- 1892 and 1893, as hereinbefore set forth, the said defendants, and particularly the defendant Sterling R. Holt, as treasurer of Marion county, Indiana, as aforesaid, is claiming and asserting the right to enforce the payments of the entire taxes as extended upon his duplicates, upon the said wrongful, unjust, unlawful and void assessment and valuation of the property of your orator, including its said letters patent as aforesaid, made by said board of review, and will, unless restrained and enjoined by a decree of this court, attempt to enforce payment of said wrongful, unjust and unlawful taxes by distraint and sale of the property of your orator, to its great and irreparable wrong and injury.

Your orator further shows unto your honors that said wrongful, unjust, inequitable, unlawful and void taxation, extended and entered upon said unjust, inequitable, unlawful and void assessment and valuation made by said board of review, constitutes and is a cloud upon the title to the property of your orator, which a court of equity has full power and jurisdiction to remove by its decree.

Your orator further shows unto your honors that it is engaged in the business of manufacturing, and that its tangible property consists almost wholly of machinery, tools and materials, used in carrying on its said business of manufacturing, and which are necessary thereto. That if said property shall be seized and sold for taxes, improperly, unjustly, inequitable and unlawfully claimed as aforesaid, that its said business will be destroyed and ruined, and great and irreparable damage will result to your orator.

Your orator further shows unto your honors that this is a suit to redress the deprivation, under color of a law of the State of Indiana, of a right secured by the Constitution and laws of the United States; and, further, that it is a suit arising under the patent laws of the United States.

And forasmuch as your orator has no adequate relief except in this court, to the end that the defendants may if they can show reason why your orator should not have the relief hereby prayed, and may, but without oath, which is hereby expressly waived, full, true, direct and perfect answer make to the matters herein stated and charged, and that defendants may answer the premises, and that they may be decreed and compelled to account for and pay over the damages which your orator has sustained, and be restrained

8 from any further violation of your orator's rights, your orator prays this honorable court to grant a writ of injunction perpetually enjoining and restraining said defendants individually, and as such treasurer, assessor, auditor, and board of review, and each and every of them, and all their deputies, clerks, attorneys, agents and servants, and all persons acting by, through or under the authority of either of them, and their successors in office forever, from in anywise collecting or in any manner attempting to collect the said amount claimed as taxes as aforesaid, and entered upon the tax duplicates in the custody of said defendants or either of them, or any other amount which may be claimed to be due on account of the value of the said or any patents owned by your orator, and your orator prays that a provisional or preliminary injunction be issued restraining the said defendants from levying upon, distraining, seizing, selling or in anywise interfering with the property of your orator pending this cause. By reason of the facts and averments hereinbefore set forth your orator further prays that upon final hearing hereof it be adjudged and decreed that the said assessment and valuation for taxation of the letters patent of your orator made directly or indirectly by said assessor and board of review is inequitable, unjust, unlawful and wholly void; that the cloud placed upon the title of your orator's corporate property by reason of said wrongful, inequitable, unlawful and void assessment and valuation made by said board of review be removed; that the defendants by decree of this court may be compelled to account for and pay over to your orator the damages your orator has sustained or shall have sustained by reason of the aforesaid unlawful acts of the defendants; also, that your honors may proceed to assess, or cause to be assessed under your direction such damages; and also that the defendants be decreed to pay the costs of this suit; and that your orator may have such other and further relief as the equity of the case or the Constitution and statutes of the United States may require and to this court may seem just.

May it please your honors to grant unto your orator not only a writ of injunction conformable to the prayer of this bill, but also a writ of subpœna of the United States of America, issuing out of and under the seal of this honorable court, directed to the said defendants, Sterling R. Holt, Joel A. Baker, Thomas Taggart, and George Wolf, commanding them on a day certain therein to be named, and under a certain penalty to be and appear in this honorable court, then and there to answer all and singular the premises, and to

stand and abide such further order, direction and decree as may be made against them.

And your orator will ever pray.

THE INDIANA MANUFACTURING
COMPANY,

By ARTHUR A. McKAIN, *President*.

[SEAL.]

Attest:

JOSEPH K. SHARPE, JR., *Secretary*.

CHESTER BRADFORD,

Solicitor and Counsel for Complainant.

9 STATE OF INDIANA, }
County of Marion, } ss:

Arthur A. McKain, being duly sworn, deposes and says, that he is the president of the corporation The Indiana Manufacturing Company, the complainant herein. That he has read the foregoing bill of complaint and knows the contents thereof, and that the same is true of his own knowledge, except as to such matters as are shown to be on information and belief, and as to those matters he verily believes them to be true.

ARTHUR A. McKAIN.

[SEAL.] Subscribed and sworn to before me, a notary public within and for said county and State, this 12th day of July, 1894.

JAMES A. WALSH,

Notary Public.

And afterwards, to wit, on said 13th day of July, 1894, before the Honorable John H. Baker, one of the judges of said court, the following proceedings in the above-entitled cause were had, to wit:

The complainant herein, The Indiana Manufacturing Company, having exhibited its bill of complaint to the court, and the court being sufficiently advised in the premises, doth now order, adjudge and decree, that the defendants herein, Sterling R. Holt, Joel A. Baker, Thomas Taggart and George Wolf, their deputies, clerks, attorneys, agents and servants, and all persons acting by, through or under the authority of either of them, be and are hereby restrained from levying upon, distraining, seizing, selling or in anywise interfering with the property of said complainant from and after the service of this order on said defendants, respectively, until the 19th day of July, 1894, and until the further order of the court. Further hearing hereof is set for July 19th, 1894, at 2 o'clock p. m. at my chambers. This order to be in force from and after service of subpoena on the defendants.

And afterwards, to wit, at the May term of said court, on the 19th day of July, 1894, before the Honorable John H. Baker, one of the judges, as aforesaid, of said court, the following further proceedings in the above-entitled cause were had, to wit:

Ordered by the court that the above-entitled cause is
 10 hereby continued until September 10th next, or as soon there-
 after as counsel can be heard, and the injunction heretofore
 entered herein is hereby continued in force until that date and until
 the further order of the court.

And afterwards, to wit, at the May term of said court, on the 7th
 day of September, 1894, before the Honorable John H. Baker, one
 of the judges, as aforesaid, of said court, the following further pro-
 ceedings in the above-entitled cause were had, to wit:

Come now the defendants, by Arthur V. Brown, their solicitor,
 and file their joint and several demurrer to the bill of complaint
 herein in the words following, to wit:

The defendants, Sterling R. Holt, Joel A. Baker, Thomas Taggart,
 and George Wolf, by protestation, not confessing all or any of the
 matters and things in the plaintiff's bill of complaint contained to
 be true in such manner and form as the same is therein set forth
 and alleged, doth demur to said bill, and for cause of demurrer
 sheweth that the plaintiff hath not in and by his said bill made or
 stated such a case as entitles him in a court of equity to any dis-
 covery from these defendants or either of them or to any relief
 against them or either of them as to the matters contained in said
 bill or any such matters.

Wherefore, and for divers other good causes of demurrer appear-
 ing in the said bill, the defendants do jointly and severally demur
 thereto and humbly demand the judgment of this court whether
 they or either of them shall be compelled to make any further or
 other answer to the said bill, and pray to be hence dismissed
 11 without their costs and charges in this behalf most wrong-
 fully sustained.

ARTHUR V. BROWN,
Counsel for Defendants.

STATE OF INDIANA, }
 Marion County, } ss:

Sterling R. Holt, Joel A. Baker, Thomas Taggart, George Wolf,
 above-named defendants, all of full age, being each separately and
 duly sworn according to law, say that the foregoing demurrer is
 not interposed for delay, but in good faith, for the cause therein set
 forth.

THOMAS TAGGART.
 STERLING R. HOLT.
 GEO. WOLF.
 JOEL A. BAKER.

Subscribed and sworn to before me this 19th day of July, 1894.
 WILLIAM A. HUGHES, [SEAL.]
Notary Public.

I certify that I have perused the complainant's bill in the above-
 stated cause, and that the above demurrer is well founded in point
 of law.

ARTHUR V. BROWN,
Counsel for Def'ts.

And afterwards, to wit, at the November term, 1894, of said court, on the 12th day of March, 1895, before the Honorable John H. Baker, one of the judges, as aforesaid, of said court, the following further proceedings in the above-entitled cause were had, to wit:

Come now the parties, by their respective solicitors, and thereupon the court, being sufficiently advised in the premises, doth now overrule the demurrer of the defendants to the bill of complaint herein, and the defendants have leave to file an answer herein within twenty days.

And afterwards, to wit, at the November term, 1894, of said court, on the 30th day of March, 1895, before the Honorable John H. Baker, one of the judges, as aforesaid, of said court, the following further proceedings in the above-entitled cause were had, to wit:

Come now the defendants, by Arthur V. Brown, Esq., their solicitor, and file their answer herein in the words following, to wit:

The answer of Sterling R. Holt, Joel A. Baker, Thomas Taggart, and George Wolf, defendants, to the bill of complaint of The Indiana Manufacturing Company, complainant.

(Filed March 30, 1895.)

These defendants now and at all times hereafter saving and reserving unto themselves all benefits and advantage of exception, which can or may be had or taken to the many errors, uncertainties and other imperfections in the said complainant's said bill of complaint, for answer thereto, or unto so much and such parts thereof as these defendants are advised is or are material or necessary for them to make answer unto, these defendants for answer saith:

That it is true that the board of review of Marion county, State of Indiana, in the course of its business in the assessment of the various corporations of said county, did assess the property of complainant at the amounts named in the complainant's bill of complaint, to wit: For the year 1892, \$20,000.00; for the year 1893, \$36,000.00; for the year 1894, \$36,000.00, but these defendants further say that plaintiff is a corporation doing a lucrative manufacturing business, which was well established and widely known, with a large amount of tangible property and a valuable franchise, exclusive of patent rights.

That the market value of the stock of plaintiff at the time for making the assessment for the year 1894 was \$360,000, as defendants are informed and believe; that the value of said stock at the time for making the assessments for the years 1892 and 1893, was at least \$180,000.00, as defendants are informed and believe.

Defendants further say that said board of review in making said assessments for the years 1892 and 1893 and 1894 the patents, if any plaintiff had, were in no way or manner included or considered and that said board in making said assessments considered only the legally taxable property of plaintiff and no other.

And these defendants deny all and all manner of unlawful com-

bination and confederacy wherewith they are by the said bill charged, without this, that there is any other matter, cause or thing in the said complainant's bill of complaint contained material or necessary for these defendants to make answer unto and not herein and hereby well and sufficiently answered, confessed, traversed and avoided and denied, is not true to the knowledge or belief of these defendants, all which matters and things these defendants are ready and willing to aver, maintain and prove as this honorable court shall direct, and humbly prays to be hence dismissed with their reasonable cost and charges in this behalf most wrongfully sustained.

ARTHUR V. BROWN,
Solicitor for Defendants.

13 STERLING R. HOLT,
 JOEL A. BAKER,
 THOMAS TAGGART,
 GEORGE WOLF,
 Defendants.

UNITED STATES OF AMERICA, }
 District of Indiana, } ss :

Sterling R. Holt, Joel A. Baker, Thomas Taggart, and George Wolf, do depose and say that they are the defendants named in the foregoing answer subscribed by them; that they have read the same and know the contents thereof; that the same is true of their own knowledge, except to the matters therein stated on information and belief, and as to those matters they verily believe it to be true.

STERLING R. HOLT.
JOEL A. BAKER.
THOMAS TAGGART.
GEORGE WOLF.

[SEAL.] Subscribed and sworn to before me this 30th day of
 March, 1895.

WILLIAM A. HUGHES,
Notary Public.

And afterwards, to wit, at the November term, 1894, of said court, on the 13th day of April, 1895, before the Honorable John H. Baker, one of the judges, as aforesaid, of said court, the following further proceedings in the above-entitled cause were had, to wit:

Comes now the complainant, by counsel, and files *his* replication herein in the words following, to wit:

This repliant, saving and reserving unto itself all and all manner of advantage of exception to the manifold insufficiencies of the said answer, for replication thereunto saith, that it will aver and prove its said bill to be true, certain and sufficient in the law to be answered unto; and that the said answer of the said defendants is uncertain, untrue and insufficient to be replied unto by this repli-

ant; without this, that any other matter or thing whatsoever in the said answer contained material or effectual in the law to be replied unto, confessed and avoided, traversed or denied, is true; all which matters and things this repliant is, and will be, ready to aver and prove as this honorable court shall direct; and humbly prays, as in and by its said bill it hath already prayed.

CHESTER BRADFORD,

Solicitor for Complainant.

14 And afterwards, to wit, at the May term of said court, on the 10th day of August, 1895, before the Honorable John H. Baker, one of the judges, as aforesaid, of said court, the following further proceedings in the above-entitled cause were had, to wit:

Comes now the complainant, by Chester Bradford, its solicitor, and files its supplemental bill herein in the words following, to wit:

To the honorable the judges of the United States circuit court for the district of Indiana:

The complainant herein, The Indiana Manufacturing Company, by consent of parties, and by leave of court first had and obtained, hereby files the following as a supplemental bill to its original bill of complaint herein.

And thereupon your orator complains and says, that since the filing of the original bill of complaint herein, the statutes of the State of Indiana relating to the subject of county boards of review have been changed and amended, and that under such amended and changed statutes such boards of review have been increased in number, and that the board of review of Marion county, Indiana, has been accordingly increased, and now consists of Sterling R. Holt, Joel A. Baker and Thomas Taggart, original defendants herein, and of William A. Bell and Charles H. Stuckmeyer, who are newly appointed members thereof, and, your orator has been informed, have been duly qualified, and who are now acting as members of said board of review, and who are citizens and inhabitants of the State of Indiana and of the United States, residing at Indianapolis, Marion county in said State. And your orator prays that the said William A. Bell and Charles H. Stuckmeyer be made parties defendant in this case.

Your orator further shows unto your honors that at the time for assessing taxes for the year 1895 it had and was possessed of tangible property to the amount of \$10,137, and no more. And that it made due return of the same for taxation upon and by means of the regular blank statements for taxation and assessment-lists furnished for that purpose by the tax assessor, as by a duly authenticated copy of said statement and of said assessment list ready here in court to be produced whenever required will more fully and at large appear. That the tax assessor demanded of your orator that the number and value of the letters patent owned by your orator should be furnished to be placed upon said assessment-list,

15 which said demand your orator refused to submit to, but instead entered and placed upon said assessment-list as an

answer to the question "Number of patent rights and value," the statement "We are advised that patent rights are not taxable, and therefore decline to state any value for them;" and that thereafter the said assessor made and attached to said assessment-list a statement saying "Number 30. Returned by deputy assessor in 1894 No. patent rights and value, 4, \$25,000. John W. McDonald."—The said John W. McDonald being the chief deputy of the defendant George Wolf, assessor of Center township, as aforesaid. And your orator avers that it then denied and now denies and has always denied the validity or legality of any assessment for taxation based directly or indirectly upon any letters patent owned or held by it. Your orator further shows that it was summoned to appear before the board of review of Marion county, Indiana, and did so appear by its secretary and treasurer, and attorney, on Wednesday, June 19, 1895, and did then show that it was possessed of no other taxable or assessable property than appeared in and by its said assessment-list and tax statement, and that whatever value the stock of said company might possess it possessed solely by reason and on account of its ownership of letters patent of the United States, and that except for such ownership such stock would have no value whatever, and that said stock was as a matter of fact all issued in payment for such letters patent, and not otherwise, and that the stock of your orator except for the ownership of such letters patent would be utterly valueless. Notwithstanding which the said board of review, composed of the said defendants Sterling R. Holt, Joel A. Baker, Thomas Taggart, William A. Bell, and Charles H. Stuckmeyer, did inequitably, wrongfully, unlawfully, and injuriously fix the assessment of your orator's property for purposes of taxation, because of your orator's ownership of said letters patent as aforesaid, and because of the value of the stock of your orator derived and resulting from such ownership of said letters patent as aforesaid, and not otherwise, at the sum of \$36,000, or \$25,863 more than your orator was possessed of in tangible property, or was properly or justly assessable for, all in violation of the Constitution and laws of the United States, under and by virtue of which the said letters patent are held by your orator, and to the great and manifest wrong and injury of your orator.

Your orator further shows unto your honors that all taxes justly and legally due from your orator have been fully paid, as appears by the tax receipts produced and ready to be produced in evidence by your orator, and your orator avers that it is ready and willing to and will pay all future taxes justly and legally assessable against it, as the same shall become due. And your orator shows at the time of paying such taxes it did solemnly and formally protest against the unjust, inequitable, unlawful and wrongful assessment herein elsewhere complained of, and did make such payment
16 as and for the full amount of all taxes properly or lawfully chargeable or assessable to your orator.

May it please your honors not only to grant unto your orator the relief heretofore prayed in and by the original bill of complaint herein, and such other and further relief as the equity of the case

made by this supplemental bill may require, and to this court may seem just, but also a writ of subpoena of the United States of America issuing out of and under the seal of this honorable court directed to the defendants William A. Bell and Charles H. Stuckmeyer, commanding them on a day certain therein to be named and under a certain penalty, to be and appear in this honorable court then and there to answer all and singular the premises, and to stand and abide such further order, direction and decree as may be made against them, jointly with the original defendants herein.

And your orator will ever pray.

THE INDIANA MANUFACTURING
COMPANY,

By ARTHUR A. McKAIN, *President.*

CHESTER BRADFORD,

Solicitor and Counsel for Complainant.

And afterwards, to wit, at the November term of said court, on the 2d day of December, 1895, before the Honorable John H. Baker, one of the judges, as aforesaid, of said court, the following further proceedings in the above-entitled cause were had, to wit:

Come now the parties, by counsel, and file their stipulations herein in the words following, to wit:

Stipulation.

It is stipulated and agreed by and between the parties to the above-entitled cause, by their counsel, that the complainant may file the annexed supplemental bill, and that the answer and replication heretofore filed shall have the same force and effect as if filed subsequently to the date of filing such supplemental bill, and that no other answer or other replication need be filed herein.

CHESTER BRADFORD,

Solicitor for Complainant.

ARTHUR V. BROWN,

Solicitor for Defendants.

17

Stipulation.

The defendants herein waive the taking of any testimony in this cause, and rest upon the pleadings and evidence already introduced and filed herein. Defendants further waive any objection to the copies of tax statements, assessment-lists, and proceedings of the board of review, which might be based on the fact that they or any of them are not certified, or that they or any of them were introduced before the filing of the supplemental bill herein. But defendants do not waive other objections heretofore made and entered of record.

Complainant gives notice that it will produce and use at the hearing the statutes of the State of Indiana, bearing upon the ques-

tion of the taxation of patents or "patent rights," and thereupon also rests.

ARTHUR V. BROWN,
Solicitor for Defendants.
CHESTER BRADFORD,
Solicitor for Complainant.

And afterwards, to wit, at the November term of said court, on the 3d day of March, 1896, before the Honorable John H. Baker, one of the judges, as aforesaid, of said court, the following further proceedings in the above-entitled cause were had, to wit:

This cause came on to be heard January 17th, 1896, on pleadings and proofs and was argued orally by Chester Bradford, on behalf of the complainant, and by Alfred R. Hovey, on behalf of the defendants, and briefs were duly filed; and now, the court having considered the same, and being sufficiently advised in the premises, doth find for the complainant, and that all the material facts set forth in its bill of complaint and supplemental bill of complaint are true and proved; and thereupon, upon consideration thereof, doth order, adjudge, and decree as follows, to wit:

First. That the statutes of the State of Indiana relating to and requiring the taxation of "patent rights" or letters patent of the United States are unconstitutional, invalid, and void.

18 Second. That the taxes assessed by the defendants, acting in their official capacities, against the complainant on account of the valuation of its capital stock was an indirect assessment for taxation of the patent rights or letters patent owned and held by complainant.

Third. That the cloud placed upon the title of complainant's corporate property by reason of the wrongful, inequitable, unlawful, and void assessment and valuation complained of be, and the same is hereby, removed.

Fourth. That a perpetual injunction issue out of this court, directed to the said defendants, Sterling R. Holt, individually and as treasurer of Marion county, Indiana, and his successors in office; Joel A. Baker, individually and as assessor of Marion county, Indiana, and his successors in office; Thomas Taggart, individually and as auditor of Marion county, Indiana, and his successors in office; George Wolf, individually and as assessor of Center township, in Marion county, Indiana, and his successors in office; and the said William A. Bell and Charles H. Stuckmeyer and their successors in office and each and every of them, and all their deputies, clerks, attorneys, agents, and servants, and all persons acting by, through, or under the authority of them or either of them, enjoining and restraining them and each of them and their successors in office forever from in anywise collecting or in any manner attempting to collect the amounts claimed as taxes and entered upon the tax duplicates in the custody of said defendants or either of them, or any other amount which may be claimed to be due on account of the value of the stock of complainant by which such patent

19 rights or letters patent may be represented.

Fifth. That the complainant do recover its costs, amounting to \$109.96, against the said defendants and have execution therefor in the same manner as in an action at law.

And afterwards, to wit, at the May term of said court, on the 16th day of September, 1897, before the Honorable John H. Baker, one of the judges, as aforesaid, of said court, the following further proceedings in the above-entitled cause were had, to wit:

Come now the defendants, by counsel, and file their petition for appeal to the Supreme Court of the United States and assignment of errors herein in the words following, to wit:

The above-named respondents, Sterling R. Holt, Joel A. Baker, Thomas Taggart, George Wolf, William A. Bell, and Charles H. Stuckmeyer, conceiving themselves aggrieved by the order and decree entered on March 3, 1896, in the above-entitled proceedings, do hereby appeal from said order and decree to the Supreme Court of the United States, and they pray that this their appeal may be allowed, and that the transcript of the record and proceedings and papers upon which said order was made and said decree entered, duly authenticated, may be sent to the Supreme Court of the United States.

ALFRED R. HOVEY,

Att'y for Def'ts & Appellants.

Assignment of Errors.

Come now the appellants, Sterling R. Holt, Joel A. Baker, Thomas Taggart, George Wolf, William A. Bell, and Charles H. Stuckmeyer, and aver that the proceedings taken and the decree entered
20 in this cause are erroneous in the following particulars:

First. The bill of complaint of the Indiana Manufacturing Company does not state facts sufficient to constitute a cause of action.

Second. The court erred in overruling the demurrer of the appellants to the bill of complaint.

Third. The decree is erroneous in the finding and decree that the taxes assessed by the appellants, acting in their official capacities, against the appellee on account of the valuation of its capital stock was an indirect assessment for taxation of the patent rights or letters patent owned and held by appellee.

Fourth. That the decree is erroneous in the finding and decree that the assessment of appellee's corporate property was wrongful, inequitable, unlawful, and void.

Fifth. That the decree is erroneous in the provision decreeing the removal of the assessments made for taxation against the appellee's property.

Sixth. The decree is erroneous in that it directs a perpetual injunction against these appellants, restraining and enjoining them and each of them, their deputies and successors, from collecting or attempting to collect the taxes entered upon the tax duplicate

against said appellees, whereas the bill should have been dismissed for want of equity.

ALFRED R. HOVEY,
Attorney for Defendants and Appellants.

And thereupon it is ordered by the court that said appeal be allowed as prayed upon the filing of a bond herein in the sum of \$2,000.

21 And afterwards, to wit, at the May term of said court, on the 30th day of September, 1897, before the Honorable John H. Baker, one of the judges, as aforesaid, of said court, the following further proceedings in the above-entitled cause were had, to wit :

Come now the defendants and file their bond on appeal to the Supreme Court of the United States herein in the penalty of two thousand dollars, with Henry L. Harding, James E. Greer, and John McGregor sureties thereon, which is now approved by the court.

And said bond is in the words following, to wit :

Know all men by these presents that we, Henry L. Harding, James E. Greer, and John McGregor, are held and firmly bound unto the above-named The Indiana Manufacturing Company in the sum of two thousand dollars, to be paid to said The Indiana Manufacturing Company ; to which payment, well and truly to be made, we bind ourselves, jointly and severally, and our and each of our heirs, executors, and administrators, jointly by these presents.

Sealed with our seals and dated this 18th day of September, 1897.

Whereas the above-named respondents have prosecuted an appeal to the Supreme Court of the United States to reverse the order and decree rendered in the above-entitled suit by the circuit court of the United States for the district of Indiana :

Now, therefore, the condition of this obligation is that if the above-named respondents shall prosecute their appeal to effect and answer all costs and damages that may be adjudged or
22 awarded against them if they shall fail to make good their plea, then this obligation to be void ; otherwise in full force.

HENRY L. HARDING.	[SEAL.]
JAS. E. GREER.	[SEAL.]
JOHN MCGREGOR.	[SEAL.]

Sealed and delivered in presence of—

HARRY B. SMITH.
F. K. SHEPARD.

Taken and approved by me this 30th day of September, 1897.

JOHN H. BAKER, *Judge.*

Here follows the testimony taken in said cause :

Examination of witnesses and production of evidence on behalf of the complainant in the above-entitled cause, under the sixty-seventh rule in equity, as amended, beginning Tuesday, April 30, 1895, at 10 o'clock in the forenoon, at the office of Chester Bradford, Esq., rooms 14 and 16, Hubbard block, southwest corner Washington and Meridian streets, Indianapolis, Indiana, before James A. Walsh, Esq., a notary public, pursuant to agreement.

Present : Chester Bradford, Esq., on behalf of complainant. Arthur V. Brown, Esq., on behalf of defendants.

It is stipulated and agreed that the depositions in this cause may be taken before any notary public, or other officer duly authorized to administer an oath, at the place where the depositions may be taken, with the same force and effect as if taken before an examiner appointed by the court ; and that such depositions may be taken by question and answer.

Counsel for complainant produces and offers in evidence a copy of the statement for taxation of the Indiana Manufacturing Company for the year 1892, and the same is marked Complainant's Exhibit " 1892 Tax Statement."

Counsel for complainant also produces and offers in evidence a copy of the proceedings of the board of review of Marion county, Indiana, for the year 1892, so far as the same relate to the
23 Indiana Manufacturing Company, and the same is marked Complainant's Exhibit " 1892 Proceedings Board of Review."

Counsel for complainant also produces and offers in evidence a copy of the assessment-list of the Indiana Manufacturing Company for the year 1893, and the same is marked Complainant's Exhibit " 1893 Assessment-list."

Counsel for complainant also produces and offers in evidence a copy of the statement for taxation of the Indiana Manufacturing Company for the year 1893, and the same is marked Complainant's Exhibit " 1893 Tax Statement."

Counsel for complainant also produces and offers in evidence a copy of the proceedings of the board of review of Marion county, Indiana, for the year 1893, so far as the same relate to the Indiana Manufacturing Company, and the same is marked Complainant's Exhibit " 1893 Proceedings Board of Review."

Counsel for complainant also produces and offers in evidence a certificate by Thomas Taggart, auditor of Marion county, Indiana, certifying to the correctness of the copies above offered in evidence, which is marked Complainant's Exhibit " Auditor's Certificate."

Counsel for complainant also produces and offers in evidence the assessment-list of the Indiana Manufacturing Company for the year 1894, which is marked Complainant's Exhibit " 1894 Assessment-list."

Counsel for complainant also produces and offers in evidence a copy of the statement for taxation of the Indiana Manufacturing

Company for the year 1894, which is marked Complainant's Exhibit "1894 Tax Statement."

Counsel for complainant also produces and offers in evidence a copy of the proceedings of the board of review of Marion county, Indiana, for the year 1894, so far as the same relate to the Indiana Manufacturing Company, and the same is marked Complainant's Exhibit "1894 Proceedings Board of Review."

Counsel for complainant also produces and offers in evidence a copy of the assessment-list of the Indiana Manufacturing Company for the year 1895, and the same is marked Complainant's Exhibit "1895 Assessment-list."

Counsel for complainant also produces and offers in evidence a copy of the statement for taxation of the Indiana Manufacturing Company for the year 1895, and the same is marked Complainant's Exhibit "1895 Tax Statement."

Counsel for defendants objects to the introduction of the tax statements marked Exhibits "1892 Tax Statement;" "1893 Tax Statement;" "1894 Tax Statement," and "1895 Tax Statement" for the reason that such evidence is irrelevant, incompetent and immaterial. Also, to the "1893 Assessment-list;" "1894 Assessment-list;" "1895 Assessment-list" for the same reasons.

Counsel for complainant agrees that said objections shall have the same force and effect as if made at the time the respective exhibits were introduced.

JOSEPH K. SHARPE, JR., being produced as a witness on behalf of the complainant in the above-entitled cause, and being first duly sworn, in answer to interrogatories proposed to him by Chester Bradford, Esq., counsel for complainant, deposes and says:

Question 1. Please state your name; age; residence and occupation.

Answer. Joseph K. Sharpe, Jr.; 41 years of age; Indianapolis, Indiana; secretary and treasurer of the Indiana Manufacturing Company.

Q. 2. How long have you held the position of secretary and treasurer of the Indiana Manufacturing Company?

A. Since November, 1891.

Q. 3. When was the company organized, if you know?

A. I don't remember the exact date of its organization. About February, 1890, I think. I made a mistake in the year. It should be February, 1891.

Q. 4. State whether or not you have been actively connected with the company since November, 1891, and conversant with its affairs.

A. I have been actively connected with the company since November, 1891, and conversant with its business.

Q. 5. The question is, have you been conversant with its business since November, 1891?

A. I have.

Q. 6. What officer on behalf of the Indiana Manufacturing Com-

pany has signed the various assessment-lists and statements for taxation during the years you have been secretary and treasurer?

A. I have, as secretary and treasurer.

Q. 7. At the time of making the statements for taxation for the year 1892, what assets did the company have, and what were their value in detail, excluding patents?

Objected to by counsel for defendants, on the ground that it is incompetent, irrelevant and immaterial, and that it makes no difference what the assets of the company were, unless it can be shown that the board of review in assessing the property on the evidence produced before it acted in bad faith.

A. The assets of the company comprised certain machinery and material and cash in bank, amounting to \$5,000.00.

Q. 8. Excluding patents, did the company at that time have assets which would amount in the aggregate to any greater sum than \$5,000.00?

25 A. They did not.

Q. 9. State whether or not you were a witness that year on behalf of the Indiana Manufacturing Company before the board of review of Marion county, Indiana.

A. I was.

Q. 10. Did you as such witness place any estimate upon the value of the patents owned by the company?

Objected to by counsel for defendants on the ground that the record is the best evidence of such testimony.

A. I made an estimate of the market value of the stock.

Q. 11. What did you base that estimate upon?

A. Upon certain purchases of stock that had been made previously.

Q. 12. Please explain how the stock came to have any such value.

A. Largely upon the faith of the investor that in the development of the business profits could be made that would warrant the investment.

Q. 13. State whether or not the company owned any patents at that time.

A. They did.

Q. 14. State whether or not they had any bearing upon the value of the stock.

A. The value of the stock was based entirely on the patents.

Q. 15. State whether or not the company owed anything in 1892; and if so, how much?

A. It did not at that time.

Q. 16. Do you remember the transactions of the company with the firm of McKain, Needler & Nethery?

A. I do. The firm of McKain, Needler & Nethery had loaned the company up to that date about \$6,000.00.

Q. 17. In view of this, do you desire to correct your answer to Q. 15?

Mr. BROWN: I object to the form of this question, for the reason that it is a leading question.

A. I do.

Q. 18. Please state what corrections you desire to make.

A. Owing to the fact that the transactions occurred in 1892, and not having any data, I had forgotten the indebtedness to McKain, Needler & Nethery.

Q. 19. State whether or not you remember of any transaction between the Indiana Manufacturing Company and Alberta J. Sharpe at or prior to the time of making this tax statement in 1892.

A. The transactions with Alberta J. Sharpe occurred after the first of April, 1892.

Q. 20. What do you now say, according to your best recollection, was the indebtedness of the Indiana Manufacturing Company, April 1, 1892?

A. About \$6,000.00.

Q. 21. And what do you say its assets were worth at that time, excluding patents?

26 Mr. BROWN: I object to the answering of this question, for the reasons given above, as incompetent, irrelevant and immaterial; and has nothing to do with the evidence that was introduced before the board of review.

A. About \$5,000.00.

Q. 22. What officer of the Indiana Manufacturing Company signed the assessment-list and statement for taxation on its behalf for the year 1893?

A. Myself, as secretary and treasurer of the company.

Q. 23. At that time, what were the assets of the Indiana Manufacturing Company, excluding the patents which were owned by it?

Objected to by counsel for defendants, for the reason that it is incompetent, irrelevant and immaterial.

A. About \$8,900.00.

Q. 24. What was its indebtedness at that time, if you know?

Same objection.

A. About \$25,000.00.

Counsel for defendants objects to all testimony relating to the assets and indebtedness of said company, on the ground that such questions are incompetent, irrelevant and immaterial. And counsel for complainant agrees that said objection shall have the same force and effect as to testimony hereafter taken as if made to each question separately.

Q. 25. What officer of the Indiana Manufacturing Company signed the assessment-list and statement for taxation on its behalf for the year 1894?

A. A. A. McKain, president, and Joseph K. Sharpe, Jr., as secretary and treasurer.

Q. 26. What were the assets of the company on April 1, 1894, excluding patents?

A. The property of the company was personal property entirely, and the value, exclusive of patents, was about \$7,265.00.

Q. 27. What was the indebtedness of the company on that date?

A. About \$50,000.00.

Q. 28. What officer of the company executed the assessment-list and the statement for taxation on its behalf for the year 1895?

A. I did, as secretary and treasurer of the company.

Q. 29. Please state the kind and value of the assets of the company on April 1, 1895?

A. The assets were personal property, and the value about \$10,000.00, exclusive of patents.

Q. 30. What was the indebtedness of the company at that date?

A. About \$50,000.00.

27 Q. 31. Please state what you know about the ability of the Indiana Manufacturing Company to pay its debts out of its tangible property and assets during all the time you have been connected with it, exclusive of any value that might be attached to patents owned by it?

A. Exclusive of patents, the Indiana Manufacturing Company has not been able to pay its debts from its other assets.

Q. 32. Has the capital stock of the Indiana Manufacturing Company been increased or diminished during the time you have been connected with it, and if so, please state which, and how much?

A. The capital stock of the Indiana Manufacturing Company was increased \$160,000.00 about February 15, 1893; from \$200,000.00 to \$360,000.00.

Q. 33. What was the purpose of that increase of the capital stock?

A. The purchase of patents.

Q. 34. What, as a matter of fact, was the additional stock of \$160,000.00 issued for; or in other words, what consideration did the company receive for it?

A. The interest of the Farmers' Friend Stacker Company in certain patents pertaining to straw-stackers.

Counsel for complainant now produces and offers in evidence a certain demand and notice dated June 7, 1894, and signed "V. M. Backus, city and county treasurer," and the same is marked Complainant's Exhibit "1892 Notice for Levy and Sale."

Counsel for complainant now produces and offers in evidence another certain demand and notice dated June 7, 1894, and signed "V. M. Backus, city and county treasurer," and the same is marked Complainant's Exhibit "1893 Notice for Levy and Sale."

Counsel for complainant now produces and offers in evidence a certain tax receipt No. 4737 D for \$95.00, dated June 14, 1894, and signed "Sterling R. Holt, treasurer Marion county," and the same is marked Complainant's Exhibit "1892 Tax Receipt."

Counsel for complainant now produces and offers in evidence another certain tax receipt No. 4738 D for \$204.55, dated June 14, 1894, and signed "Sterling R. Holt, treasurer Marion county," and the same is marked Complainant's Exhibit "1893 Tax Receipt."

Counsel for complainant now produces and offers in evidence

another certain tax receipt No. 11617 for \$91.30, dated April 20, 1895, and signed "Sterling R. Holt, treasurer Marion county," and the same is marked Complainant's Exhibit "1894 Tax Receipt, 1st Installment."

Recess for dinner until 2 p. m.

28 Met pursuant to adjournment.

Present the same as this forenoon.

It is now stipulated and agreed, and counsel for defendants admits, that the defendant Sterling R. Holt is, and has been since prior to the bringing of this suit, the treasurer of Marion county, Indiana, and that the duty of the treasurer of Marion county, Indiana, is to collect taxes not only on behalf of said county, but also on behalf of the city of Indianapolis, and of the State of Indiana, and to pay over the moneys collected as taxes on behalf of the State of Indiana to the treasurer of Indiana. That the defendant Joel A. Baker is the assessor of Marion county, Indiana, and has been since before the beginning of this suit. That Thomas Taggart is and has been since before the bringing of this suit the auditor of Marion county, Indiana. That the said Sterling R. Holt, Joel A. Baker, and Thomas Taggart, during the incumbency of their respective offices, as stated, constituted the board of review of Marion county, Indiana. That George Wolf is and has been since before the beginning of this suit the assessor of Center township in Marion county, Indiana, whose duty it is to require and secure from all persons and corporations within said township their assessment-lists and tax statements.

Examination of the witness JOSEPH K. SHARPE, JR., continued:

Q. 35. Please give a list of the patents owned or controlled by the Indiana Manufacturing Company, by number and date. By "patents" I mean letters patent of the United States.

A. The Indiana Manufacturing Company owns the following patents: No. 297,561, dated April 29, 1884; No. 424,433, dated March 25, 1890; No. 467,476, dated January 19, 1892; No. 493,734, dated March 21, 1893; No. 498,903, dated June 6, 1893; No. 517,390, dated March 27, 1894; No. 517,475, dated April 3, 1894; No. 518,620, dated April 24, 1894; No. 519,680, dated May 8, 1894; No. 514,266, dated February 6, 1894. And we have exclusive license with right to grant sublicenses for the following: No. 512,553, dated January 9, 1894; No. 512,556, dated January 9, 1894; No. 512,557, dated January 9, 1894; No. 512,558, dated January 9, 1894; No. 517,524, dated April 3, 1894; No. 517,525, dated April 3, 1894; No. 519,473, dated May 8, 1894; No. 519,474, dated May 8, 1894; No. 522,758, dated July 10, 1894; No. 522,759, dated July 10, 1894; No. 522,760, dated July 10, 1894. We also own No. 297,561, dated April 29, 1884, and No. 382,686, dated May 15, 1888, and No. 467,477, dated January 19, 1892.

Q. 36. To what do these patents relate?

A. They relate to the art of stacking straw and thrashing grain.

Q. 37. How many of them relate to the art of thrashing grain, and which ones if you know?

29 A. Three relate to the art of thrashing grain, namely, the last three named.

Cross-examination.

Questions by Mr. Brown:

Cross-question 38. Mr. Sharpe, you will state, if you know, what transfers of stock you made of the Indiana Manufacturing Company for the year previous to April 1, 1892.

Objected to by counsel for complainant as immaterial and irrelevant.

Answer. I couldn't state without turning to our record.

The further cross-examination of this witness is now adjourned to enable him to procure data necessary to answer the question; and meantime, by consent of counsel, the examination of other witnesses is proceeded with.

JOSEPH K. SHARPE, JR.

ARTHUR A. McKAIN, being produced as a witness on behalf of the complainant in the above-entitled cause, and being first duly sworn, in answer to interrogatories proposed to him by Chester Bradford, Esq., counsel for complainant, deposes and says:

Question 39. Please state your name; age; residence, and occupation.

Answer. Arthur A. McKain; 43 years; Indianapolis; president of the Indiana Manufacturing Company.

Q. 40. When was the Indiana Manufacturing Company incorporated?

A. It was incorporated on the 11th day of February, 1891.

Q. 41. When was the first meeting of the board of directors held?

A. On the following day; the 12th of February, 1891.

Q. 42. Since what date have you been president of the Indiana Manufacturing Company?

A. Since the 12th day of February, 1891, continuously.

Q. 43. How familiar have you been with the business of the Indiana Manufacturing Company since its incorporation?

A. I have been thoroughly familiar with everything pertaining to it, except possibly a few minor details.

Q. 44. What was the original capital stock of the Indiana Manufacturing Company?

A. \$200,000.00.

Q. 45. For what consideration was that stock issued?

A. It was issued to me in consideration of my assignment to the company of certain letters patent.

Q. 46. State whether or not the company received anything else except letters patent for said stock?

A. It did not.

30 Q. 47. State whether or not you were personally present when the taxes for the years 1892 and 1893 were paid.

A. I was.

Q. 48. Who were they paid to?

A. They were paid to Sterling R. Holt, treasurer of Marion county.

Q. 49. What statements, if any, were made to Mr. Holt at the time of payment of such taxes?

A. The company's attorney, Mr. Bradford, and myself, made a tender in gold of the amount of taxes which was estimated by the auditor and treasurer to be due, exclusive of the \$25,000.00 assessment on patents, the payment being tendered as payment in full for all taxes. This was refused by Mr. Holt, but finally accepted as partial payment without any prejudice to the company's claim of exemption from taxation on patents.

Q. 50. State whether or not any protest was made at that time against assessment or taxation on account of the ownership of patents.

A. There was; a protest was made by the company's attorney.

Q. 51. What, if anything, was said by Mr. Holt relating to the enforcement of the claim he was making?

A. Mr. Holt agreed to delay proceedings until the company could have time to ask the United States court for a restraining order. I would like to amend this answer by saying that the agreement with Mr. Holt was that he would delay any proceeding whatever in regard to the levy until he could lay the matter before the board of review.

Q. 52. Did he state what he would do or be compelled to do thereafter?

A. He said that he would, unless they abated the charge, be compelled to levy unless the taxes were paid.

Q. 53. What, if anything, did he say about his duty relating to the collection of taxes as shown by the tax duplicates furnished by the auditor?

A. He said that as the tax duplicates came to him he was compelled to act; if the taxes were not paid, he would have to collect them.

Q. 54. Was the capital stock of the Indiana Manufacturing Company ever increased or diminished, and if so, in what amount?

A. It was increased by the issue of \$160,000.00 additional.

Q. 55. For what purpose was this increase of stock made?

A. To acquire the rights in certain United States patents owned by the Farmers' Friend Stacker Company.

Q. 56. What consideration, as a matter of fact, did the Indiana Manufacturing Company receive in exchange for this \$160,000.00 of increased capital stock?

A. Nothing but those rights in patents.

31 Q. 57. Do you know whether or not the Indiana Manufacturing Company has ever been possessed of tangible property or assets equal or exceeding its indebtedness?

A. I do.

Q. 58. What is the fact?

A. The fact is that, aside from its patent rights, it has never at any time subsequent to February 1, 1892, had assets equal to its liabilities.

Cross-examination waived.

ARTHUR A. McKAIN.

JAMES P. BAKER, being produced as a witness on behalf of the complainant, and being first duly sworn, in answer to interrogatories proposed to him by Chester Bradford, Esq., counsel for complainant, deposes and says:

Question 59. Please state your name; age; residence, and occupation?

Answer. James P. Baker; 50 years old; Indianapolis, Indiana; attorney-at-law.

Q. 60. Do you know anything about the incorporation and early transactions of the Indiana Manufacturing Company?

A. Yes, sir; I know something about them. As I remember, I drew up the articles of incorporation.

Q. 61. Were you present at the first meeting of the board of directors?

A. Yes, sir.

Q. 62. Did you ever have any official connection with the company, and if so, what office did you hold?

A. I was the secretary for a while; I think from the organization up to some time in the fall of 1891.

Q. 63. What was the original capital stock of this company?

A. \$200,000.00, I think.

Q. 64. For what consideration was it issued, if you know?

A. Well, the stock was—the company, as I understand it, was organized for the purpose of buying certain patent rights and doing a manufacturing business under the patents, and it bought certain patents which had been originally granted or issued to James Buchanan. Those patents had been conveyed by him to the Cyclone Company. That company went into the hands of a receiver, and I conveyed them as such receiver, under the orders of the superior court, to Arthur A. McKain, as trustee, as to a part of the territory of the United States, and to James Buchanan as to the other part. The Indiana Manufacturing Company bought the right to these patents held by Arthur A. McKain as trustee, and as a consideration therefor issued the \$200,000.00 in stock either to him or to persons he designated. At any rate, the consideration for the stock was for the interest Mr. McKain held in these patents.

Cross-examination waived.

JAMES P. BAKER.

32 By consent of counsel the further taking of these depositions is now adjourned until tomorrow (Wednesday) afternoon at 2 o'clock.

INDIANAPOLIS, IND., WEDNESDAY, *May 1, 1895.*

Met pursuant to adjournment.

Present: Same as yesterday.

Examination of the witness, JOSEPH K. SHARPE, JR., continued.

Questions by Mr. BRADFORD:

Question 65. Please state whether or not stock of the Indiana Manufacturing Company has any value except such as is derived from the possession of the patents you have spoken of.

Answer. The stock of the Indiana Manufacturing Company has no value except that derived from its letters patent. The fact of the case is that, except through them, the company is hopelessly insolvent, and couldn't pay its debts by about \$40,000.00.

Q. 66. How did you come to return these patents in your 1893 and 1894 assessment-lists?

A. The valuation was made by the deputy assessor; not by myself. He refused to accept the assessment-list without setting the valuation as it appears on the lists.

Cross-examination.

Questions by Mr. BROWN:

Cross-question 67. Mr. Sharpe, I will now ask you again to state, if you know, what transfers of stock have been made of the Indiana Manufacturing Company since its organization as shown by the books of the company.

Objected by counsel for complainant as immaterial, irrelevant and not cross-examination. It is agreed that this objection shall apply to all questions which may be asked relating to the sale of stock.

Answer. I have prepared a list showing the transfers from November, 1891, to December, 1894, and can give a complete list if required.

X Q. 68. You will please present to me this list.

A. All right.

X Q. 69. Do you know anything about the amount paid for stock at any time since you have been secretary of the company?

A. I do.

X Q. 70. Please take this list, look over it, and give me the amount that was paid per share on the shares of stock where you know the amount that was paid.

A. The par value of each share is \$50.00. On one occasion, namely, March 19, 1892, I purchased from Francke & Schindler stock at 10 cents on the dollar, or \$5.00 per share; three and three-fifths shares were purchased. On October 9, 1892, I purchased from Foster & Bennett Lumber Company for A. J. Sharpe, five
32½ shares at \$10.00 per share, that is twenty per cent of the par value. On January 12, 1893, I traded for A. J. Sharpe a

piece of property for certain shares belonging to Holliday & Richards. I consider that the stock cost from 15 to 18 per cent. of par value. On October 20, 1893, I purchased for A. J. Sharpe seven shares from L. M. Harvey, giving my personal obligation, which is not yet due or paid for, paying par. W. H. Keys and J. W. Nethery, on November 17, 1893, sold to A. V. Boyce and A. J. Sharpe \$4,000.00 worth of the stock, receiving for same two lots located in the eastern part of the city of Indianapolis. I understand that said lots were sold to the Home Brewing Company, netting the sellers about 45 cents on the par value of the stock. On December 28, 1894, R. M. Cash sold to A. A. McKain and A. J. Sharpe three shares of stock at 66 $\frac{2}{3}$ per cent. of par value.

X Q. 71. Are those all the sales of which you have any knowledge of the price that was paid for the stock?

A. On one occasion, the date I do not remember now, the Advance Thrashing Company and the Nichols, Shepard & Co., purchased \$50,000.00 worth of the stock, paying for the same \$10,000.00, that is 20 per cent. I do not remember the date, but I think it was some time in 1893.

X Q. 72. Mr. Sharpe, please state if you know of any other transfers and the price paid for the stock.

A. I do not recollect any more at present.

X Q. 73. You stated, I believe, that as secretary of the company you signed all the assessment-lists and tax statements which have been introduced here in evidence?

A. I did.

X Q. 74. What tangible property did the company have on the 1st day of April, 1892, and its value, if you know?

A. It would be impossible to state the value; but the property consisted of machinery, material and money in bank.

X Q. 75. Have you any idea of the value of the tangible property on the 1st day of April, 1892?

A. My idea would be, that it was principally in machinery and material. Say about \$2,000.00 machinery; \$2,000.00 material; and \$1,000.00 in cash. Now I might be entirely wrong about that.

X Q. 76. If the Indiana Manufacturing Company had any tangible property on the first day of April, 1893; please state what kind, and give its value?

A. It had stackers in process of manufacture, to the amount of \$3,500.00; material, \$2,000.00; machinery, \$2,000.00, and other property amounting in total to \$8,900.00.

X Q. 77. If the Indiana Manufacturing Company had any tangible property on the 1st day of April, 1894, please state the kind, and its value?

A. The character of the tangible property is identical with that of the previous year, and the amount about \$7,200.00.

33

X Q. 78. How much money do you spend annually on advertising the business of the Indiana Manufacturing Company?

Same objection as to X Q. 67.

A. From \$40,000.00 to \$50,000.00. This comprises newspaper advertising; expense of purchasing and distributing catalogues; traveling expenses in effecting royalty contracts and introducing the stacker to the notice of the manufacturers and thrashermen; and in fact, generally, to render our patents valuable.

X Q. 79. How extensive is your business; I mean, over what territory do you sell the product of your factory?

A. In the wheat-growing sections of the United States.

X Q. 80. You say that your capital stock has no value except that derived from its letters patent?

A. I reaffirm that statement, and will say that our manufacturing business has no value except in developing our stacker, the profit of which comes from the fact only that we own the patents for same.

X Q. 81. In your statement made for the year 1892, you state that the par value of your stock is 10 per cent. of par value; is that true?

A. It was as based upon what had been paid for stock previously.

X Q. 82. What was the value of your stock on April 1, 1893?

A. About the same as the year before.

X Q. 83. Do you base this estimate upon the stock that was sold just previous to April 1, 1893?

A. Not altogether. The company was meeting with much opposition from manufacturers, and without their support the value of the stock would have been but very little.

X Q. 84. What was the value of the stock on April 1, 1894?

A. I should say about the same as previously, from the fact that our royalty contracts had not been fully completed, and that we were about entering expensive patent litigation, which, if it should result adversely to us, would entirely destroy the value of the stock.

X Q. 85. What do you mean by the same as previously?

A. That is the previous years, 1892 and 1893; as the company has never declared any dividends.

JOSEPH K. SHARPE, JR.

I, Thomas Taggart, auditor of Marion county, Indiana, do hereby certify that the annexed paper, marked "Exhibit A," is a full, true, and correct copy of the statement for taxation of the Indiana Manufacturing Company for the year 1892, and which was filed in my office Oct. 22, 1892; that the annexed paper, marked "Exhibit B," is a full, true, and correct copy of the proceedings of the board of review of Marion county, Indiana, for the year 1892, so far as such proceedings relate to the subject of taxation of the Indiana Manufacturing Company; that the annexed paper, marked "Exhibit C," is a full, true, and correct copy of the statement for taxation of the Indiana Manufacturing Company for the year 1893, and which was filed in my office Aug. 25, 1893; that the annexed paper, marked "Exhibit D," is a full, true, and correct copy of the assessment-list of the Indiana Manufacturing Company for the year 1893; that the annexed paper, marked "Exhibit E," is a full, true, and correct copy

of the proceedings of the board of review of Marion county, Indiana, for the year 1893, so far as such proceedings relate to the subject of taxation of the Indiana Manufacturing Company.

I further certify that the assessments for taxation for said years of the said The Indiana Manufacturing Company *was* based upon the said statements and assessment-lists and proceedings of which the above-named exhibits are copies, and that the item of patents was taken into consideration in fixing the said assessments.

In witness whereof I hereunto set my hand
Commissioners' Seal as auditor as aforesaid and affix my official
of Marion County, seal, at Indianapolis, Indiana, this 14th day
Indiana. of June, 1891.

THOMAS TAGGART,
Auditor of Marion County.

[Endorsed:] In the U. S. circuit court for the district of Indiana.
Indiana Mfg. Co. *vs.* S. R. Holt *et al.* No. 9066. In equity. Com-
plainant's Exhibit "Auditor's Certificate." James A. Walsh, notary
public. Filed Dec. 2, 1895. Noble C. Butler, clerk.

35 EXHIBIT "A." Thos. Taggart, Auditor.

1892.

Form No. 3.

Statement by Corporations, etc.

Under section 73 of the act concerning taxation.

Approved March 6, 1891.

SEC. 73. Tax law.—Every street railroad, water works, gas manufacturing, mining, gravel road, plank road, savings bank, insurance and other associations incorporated under the laws of this State (other than railroad companies, and those heretofore specially designated), shall, by its president or other proper accounting officer, between the first day of April and the first day of June of the current year, in addition to the other property required by this act to be listed, make out and deliver to the assessor a sworn statement of the amount of its capital stock, setting forth particularly, etc. (The terms printed in statement below.)

In case of the failure or refusal to make report, such corporation shall forfeit and pay one hundred dollars for each additional day such report is delayed beyond the first of June, to be sued and recovered in any proper form of action, in the name of the State of Indiana, on the relation of the prosecuting attorney, such penalty, when collected, to be paid into the county treasury. And such prosecuting attorney in every case of conviction shall be allowed a docket fee of ten dollars, to be taxed as costs on such action.

Statement by the Indiana Mfg. Co. of capital stock, etc., as required by section 73 of an act of the legislature of the State of Indiana entitled "An act concerning taxation," approved March 6, 1891.

First.	{ Name of company or association, The Indiana Mfg. Co. Location of company or association, West Indianapolis. The principal office or place of business is in the 22 West Maryland St.	
		Amount.
Second.	{ Amount of capital stock authorized..... \$200,000 No. of shares in which capital stock is divided..... No. 4,000	
Third.	{ Amount of capital stock paid up..... 200,000 No. of shares actually issued... No. —	
Fourth.	{ Market value of the shares of stock, 10 % of par value..... 20,000 If no market value, then the actual value....	
Fifth.	The total amount of indebtedness, except the indebtedness for the current expenses, excluding from such expenses the amount paid for the purchase or improvement of property.....	
	{ Lands within the State.. \$ Lots within the State... Personal property within the State..... 5,000	
Sixth.	{ The value of all tangible property. { Total within the State... 5,000 Lands without the State. \$ Lots without the State.. Personal property with- out the State.....	
Seventh.	{ Total without the State. The difference in value between all tangible property and the capital stock.....	
Eighth.	The name and value of each franchise or privilege owned or enjoyed by such corporation.	

Interrogatory 1. Are you, or were you, on the first day of April of the present year, the executor of the last will or the administrator of the estate of any deceased person, or the guardian of the estate of any infant or person of unsound mind, or the trustee of the property of any person, or the receiver of any corporation, association or firm, or the agent, attorney or banker investing, loaning or otherwise controlling the money or other property of any other person resident in this State, or the president or accounting officer of any corporation, or a partner, consignee or pawnbroker? If yes, designate for whom you were then, or are now acting in such representative or fiduciary capacity, and if you were, or are now acting under the authority of any particular court, name court, and also state to what court you report.

Interrogatory 2. Have you, before the first day of April of the present year, either personally, or through the agency of others, caused all or any part of your taxable money or other property to be temporarily converted, either by sale, borrowing, exchange, or in any other manner, into United States notes, not taxable, commonly called "greenbacks," or bonds or other securities of the United States not taxable, or any other property not taxable, with the intention to pay back, return or exchange or sell back such property after you have made out your tax statement, for the purpose of evading the payment of taxes on such property; or did you, on or after the first day of April of the present year, and before you saw this interrogatory, pay back, return, re-exchange or sell back property for the purpose aforesaid?

Interrogatory 3. If you have converted any of your money or property, or money or property of any other person, as inquired of you, then state when the same was so converted or invested, and the kind and amount and value thereof.

I, Joseph K. Sharpe, Jr., sec. & treas., do solemnly swear that the above statement is true according to the best of my knowledge and belief.

JOSEPH K. SHARPE, JR.,
Sec. & Treas.

Subscribed and sworn to before me this 28 day of April, 1892.

GEO. WOLF.
JNO. W. McDONALD.

NOTE.—These statements to be scheduled by the assessor and returned to the county auditor.

Copy.

[Endorsed:] "A." 632. 1892. Form No. 3. Statement by the *the Indiana Mfg. Co. Company* (under section 73). County of Marion, city or town of Ind'plis, township of Center. Returned by the assessor and filed in the office of the county auditor this — day of —, 1892. —, county auditor. \$20,000.00. Joel A. Baker, pres. July 13th, '92. ~~These~~ These statements should be arranged in alphabetical order and numbered. They should then be scheduled by the assessor and said schedule and statements returned to the county auditor when the report of assessment is made. This statement to be filed with county auditor. Copy. Filed Oct. 22, 1892. Thos. Taggart, auditor Marion Co. In the U. S. circuit court for the district of Indiana. *Indiana Mfg. Co. vs. S. R. Holt et al.* No. 9066. In equity. Complainant's Exhibit "1892 Tax Statement." James A. Walsh, notary public. Filed Dec. 2, 1895. Noble C. Butler, clerk.

EXHIBIT "B." Thos. Taggart, Auditor.

Indiana Manufacturing Company.

JOSEPH K. SHARPE, representing the Indiana Manufacturing Company, appearing before the board, being duly sworn, testified as follows:

Questions by Mr. TAGGART:

1 Q. Mr. Sharpe, you represent what company?

A. The Indiana Manufacturing Company.

2 Q. Capital stock authorized, \$200,000; paid up, \$20,000; the market value of the stock, 10 % on the par value; no lands, no lots; personal property within the State, \$5,000?

A. Yes, sir.

3 Q. What kind of business does this company do?

A. Manufacturing straw-stackers on an improved patent of the old Buchanan Cyclone business. It is the means of stacking straw with wind; that is what we are doing. We blast the air or throw it out through a chute. After we demonstrate it, it becomes a great deal more valuable. We felt we were putting it at a fair value at \$20,000.

On motion, the assessment of the Indiana Manufacturing Company was fixed by the board at \$20,000.

[Endorsed:] "B." 1892. In the U. S. circuit court for the district of Indiana. *Indiana Mfg. Co. vs. S. R. Holt et al.* No. 9066. In equity. Complainant's Exhibit "1892 Proceedings Board of Review." James A. Walsh, notary public. Filed Dec. 2, 1895. Noble C. Butler, clerk.

EXHIBIT "C." Thos. Taggart, Auditor.

1893.

Form No. 3.

Statement by Corporations, etc.

Under section 73 of the act concerning taxation.

Approved March 6, 1891.

SEC. 73. Tax law.—Every street railroad, water works, gas manufacturing, mining, gravel road, plank road, savings bank, insurance and other associations incorporated under the laws of this State (other than railroad companies, and those heretofore specially designated), shall, by its president or other proper accounting officer, between the first day of April and the first day of June of the current year, in addition to the other property required by this act to be listed, make out and deliver to the assessor a sworn statement of

the amount of its capital stock, setting forth particularly, etc. (The terms printed in statement below.)

In case of the failure or refusal to make report, such corporation shall forfeit and pay one hundred dollars for each additional day such report is delayed beyond the first of June, to be sued and recovered in any proper form of action, in the name of the State of Indiana, on the relation of the prosecuting attorney, such penalty, when collected, to be paid into the county treasury. And such prosecuting attorney in every case of conviction shall be allowed a docket fee of ten dollars, to be taxed as costs on such action.

Statement by the Indiana Mfg. Co. of capital stock, etc., as required by section 73 of an act of the legislature of the State of Indiana entitled "An act concerning taxation," approved March 6, 1891.

First.	{ Name of company or association, The Indiana Mfg. Co. Location of company or association, Indianapolis. The principal office or place of business is in the 7 Board Trade b'ding.	
		Amount.
Second.	{ Amount of capital stock authorized..... No. of shares in which capital stock is divided..... No. 7,200	\$360,000
Third.	{ Amount of capital stock paid up..... No. of shares actually issued..... No. 7,200	360,000
Fourth.	{ Market value of the shares of stock; none on the market. If no market value, then the actual value....	36,000
Fifth.	The total amount of indebtedness, except the indebtedness for the current expenses, excluding from such expenses the amount paid for the purchase or improvement of property.....	25,000
	{ Lands within the State. None. Lots within the State... None. Personal property within the State.....	\$33,900
Sixth.	{ The value of all tangible property. Total within the State.. Lands without the State.. None. Lots without the State.. None. Personal property without the State..... None.	
	{ Total without the State.....	None.
Seventh.	The difference in value between all tangible property and the capital stock.	2,100
Eighth.	The name and value of each franchise or privilege owned or enjoyed by such corporation..	

Interrogatory 1. Are you, or were you, on the first day of April of the present year, the executor of the last will or the administrator

of the estate of any deceased person, or the guardian of the estate of any infant or person of unsound mind, or the trustee of the property of any person, or the receiver of any corporation, association or firm, or the agent, attorney or banker investing, loaning or otherwise controlling the money or other property of any other person resident in this State, or the president or accounting officer of any corporation, or a partner, consignee or pawnbroker? If yes, designate for whom you were then, or are now acting in such representative or fiduciary capacity, and if you were, or are now acting under the authority of any particular court, name court, and also state to what court you report.

No.

Interrogatory 2. Have you, before the first day of April of the present year, either personally, or through the agency of others, caused all or any part of your taxable money or other property to be temporarily converted, either by sale, borrowing, exchange, or in any other manner, into United States notes, not taxable, commonly called "greenbacks," or bonds or other securities of the United States not taxable, or any other property not taxable, with the intention to pay back, return or exchange, or sell back such property after you have made out your tax statement, for the purpose of evading the payment of taxes on such property; or did you, on or after the first day of April of the present year, and before you saw this interrogatory, pay back, return, re-exchange or sell back property for the purpose aforesaid?

No.

Interrogatory 3. If you have converted any of your money or property, or money or property of any other person, as inquired of you, then state when the same was so converted or invested, and the kind and amount and value thereof.

No.

I, Joseph K. Sharpe, Jr., sec. & treas., do solemnly swear that the above statement is true according to the best of my knowledge and belief.

THE INDIANA MFG. CO.


Subscribed and sworn to before me this 23rd day of May, 1893.

GEORGE WOLF, *Ass'r.*

FRANK BYRKIT, *D'p'ty.*

NOTE.—These statements to be scheduled by the assessor and returned to the county auditor.

Copy.

[Endorsed]: "C." 82. 1893. Form No. 3. Statement by the *the Indiana Mfg. Co. Company*. (Under section 73.) County of Marion, city or town of Indianapolis, township of Centre. Returned by the assessor and filed in the office of the county auditor this — day of —, 1893. — —, county auditor. \$36,000.  These statements should be arranged in alphabetical order and numbered. They should then be scheduled by the assessor, and said schedule and statements returned to the county auditor when the report of

assessment is made. This statement to be filed with county auditor. Copy. Filed Aug. 25, 1893. Thos. Taggart, auditor Marion Co. In the U. S. circuit court for the district of Indiana. Indiana Mfg. Co. vs. S. R. Holt *et al.* No. 9066. In equity. Complainant's Exhibit "1893 Tax Statement." James A. Walsh, notary public. Filed Dec. 2, 1895. Noble C. Butler, clerk.

38 *Schedule of All the Personal Property Held by the Indiana Mfg. Co., Centre Township, in Marion County, on the 1st Day of April, 1893.*

No.	Personal property—credits.	Valuation by party.	Valuation by township assessor.	Valuation by county assessor.
1	All annuities.....	None.		
2	All bonds.....			
3	All notes secured by mortgage.....			
4	All other notes.....			
5	All accounts.....	17,908		
6	All demands and claims.....	6,342		
7	All deposits in bank.....	494		
8	All deposits with other corporations.....	None.		
9	All deposits with individuals.....			
10	All other amounts due me from any person or corporation.....			
	Total credits due me.....	24,744		
	From the sum of the above credits I claim a deduction of the amount of my <i>bona fide</i> indebtedness, to wit.....			
	Total indebtedness which should be deducted from my credits.....	25,000		
	Leaving balance for which I should be assessed.....			
PERSONAL PROPERTY—CHATTELS.				
1	Money on hand or on deposit, or subject to my order, check, or draft, not already entered under the title of credits.....	None.		
2	All money loaned by me and not already entered on this schedule.....			
3	All interest owing me and not entered on this schedule.....			
4	All judgments or allowances in my favor entered in any court, and which I have not already entered on this schedule; also all legacies, bequests, and other estates in expectancy.....			
5	All moneys invested in certificates of purchase at tax sales.....			
6	All money invested in certificates of purchase at sheriff's sales.....			
7	All money loaned to building, loan, and savings associations.....			
8	All shares of stock in any corporation formed outside of this State, and also all shares of stock in any corporation formed in this State and conducting its business outside of this State.....			
9	Value of goods and merchandise on hand.			

Schedule of Personal Property, &c.—Continued.

No.	Personal property—chattels.	Valuation by party.	Valuation by township assessor.	Valuation by county assessor.
10	Value of all articles purchased, received, or otherwise held for the purpose of being used, in whole or in part, in any process or operation of manufacturing, combining, rectifying, or refining.....	2,000		
11	Value of manufactured articles on hand.....	3,500		
12	Value of manufacturing tools, implements, and machinery (other than engines and boilers, which shall be listed as such).....	2,000		
13	Value of agricultural tools, implements, and machinery.....			
14	Value of gold or silver plate and plated ware.....	None.		
15	Value of diamonds and jewelry.....			
16	Value of office.....	35		
17	Value of mechanical tools, law, and medical books.....			
18	Value of surgical instruments and medicines.....			
19	Value of fire-arms.....			
20	Value of poultry.....			
21	Value of nursery stock.....			
22	Value of property such person is required to list as pawnbroker.....			
23	Value of property of companies and corporations other than property hereinbefore enumerated.....	None.		
24	Value of property of saloons and eating-houses.....			
25	Value of market-garden products.....			
26	Value of home-made manufactures.....			
27	Value of slaughtered animals.....			
28	Every franchise and description, and value.....			
29	Value of brick, stone, and all other building material on hand.....			
30	Number of steamboats, sailing vessels, wharf-boats, canal-boats, barges, or other water craft, either within or without this State, and value.....	No.		
31	Number of patent rights, and value.....	4	25,000	
32	Number of steam-engines, including boilers, and value.....			
33	Number of fire and burglar proof safes, and value.....		50	
34	Number of billiard, pigeon-hole, bagatelle, and other similar tables, and value.....			
35	Number of piano-fortes, and value.....			
36	Number of organs and other musical instruments, and value.....	None.		
37	Number of sewing or knitting machines, and value.....			
38	Number of watches and clocks, and value.....			
39	Number of carriages, wagons, coaches, hacks, carts, drays, or other vehicles, and value.....	1	50	

Schedule of Personal Property, &c.—Continued.

No.	Personal property—chattels.	No.	Valuation by party.	Valuation by township assessor.	Valuation by county assessor.
40	Number of bicycles, tricycles, velocipedes, and value	1	50		
41	Number of hoop-poles, and value....				
42	Number of staves and heading and heading blocks, and value.....				
43	All cooperage material and merchandise, and value				
44	Number of horses, and value.....	None.			
45	Number of mules, jack and jennets, and value.....				
46	Number of cattle, and value.....				
47	Number of sheep, and value.....				
48	Number of hogs, and value.....				
49	Number of stands of bees, and value.....				
50	Number of cords of wood, and value.....				
51	Bushels of coal, and value.....				
52	Bushels of lime, and value.....				
53	Bushels of wheat, and value.....				
54	Bushels of corn, and value.....				
55	Bushels of rye, and value.....				
56	Bushels of oats, and value.....				
57	Bushels of potatoes, and value.....				
			32,685		
			32,685		
58	Bushels of barley, and value.....	None.			
59	Bushels of grass and clover seed, and value.....				
60	Bushels of flaxseed, and value.....				
61	Bushels of fruit, and value.....				
62	Tons of hay, and value.....				
63	Tons of hemp, and value.....				
64	Pounds of beef, and value.....				
65	Pounds of bacon, and value.....				
66	Pounds of bulk pork, and value.....				
67	Pounds of lard, and value.....				
68	Pounds of wool, and value.....				
69	Pounds of tobacco, and value.....				
70	Pounds of hops, and value.....				
71	Pounds of maple sugar, and value				
72	Barrels of beef, and value.....				
73	Barrels of pork, and value.....				
74	Gallons of cider, and value.....				
75	Gallons of vinegar, and value.....				
76	Gallons of wine and whisky, and value.....				
77	Gallons of sorghum or maple molasses, and value.....				
78	Feet of lumber, and value.....	1	15		
79	Pounds of starch, and value.....				
80	Pounds of feed, and value.....				
81	Reams of paper, and value.....				
82	Pounds of pulp, and value.....				
83	Gallons of oils of all kinds, and value.....				
84	Number of scales, and value.....				

Schedule of Personal Property, &c.—Continued.

No.	Personal property—chattels.	No.	Valuation by party.	Valuation by township assessor.	Valuation by county assessor.
85	Number of yards of cloth, and value.	4	1,200		
86	Number of yards of flannel, and value.				
87	Number of blankets, and value				
88	Pounds of yarn, and value.....				
89	Tons of ice, and value.....				
90	Number of threshing machines, and value...	None.			
91	Number of corn-shellers, and value..				
92	Value of logs, timber, and all other property not specified above required to be listed.....				
93	Male dogs owned or harbored by me..				
94	Female dogs owned or harbored by me..				
Grand total.....			33,900		
Age at last birthday.....					

Interrogatory 1. Are you, or were you, on the first day of April of the present year, the executor of the last will or the administrator of the estate of any deceased person, or the guardian of the estate of any infant or person of unsound mind, or the trustee of the property of any person, or the receiver of any corporation, association or firm, or the agent, attorney or banker investing, loaning or otherwise controlling the money or other property of any other person resident in this State, or the president or accounting officer of any corporation, or a partner, consignee or pawnbroker? If yes, designate for whom you were then, or are now acting in such representative or fiduciary capacity, and if you were, or are now acting under the authority of any particular court, name court, and also state to what court you report.

No.

Interrogatory 2. Have you, before the first day of April of the present year, either personally, or through the agency of others, caused all or any part of your taxable money or other property to be temporarily converted, either by sale, borrowing, exchange or in any other manner, into United States notes, not taxable, commonly called "greenbacks," or bonds or other securities of the United States not taxable, or any other property not taxable, with the intention to pay back, return or exchange, or sell back such property after you have made out your tax statement, for the purpose of evading the payment of taxes on such property; or did you, on or after the first day of April of the present year, and before you saw this interrogatory, pay back, return, re-exchange or sell back such property for the purpose aforesaid?

No.

Interrogatory 3. If you have converted any of your money or property, or money or property of any other person, as inquired of you, then state when the same was so converted or invested, and the kind and amount and value thereof.

No.

STATE OF INDIANA, }
Marion County, } ss:

I, Joseph K. Sharpe, Jr., sec. & treas., being duly sworn, say, to the best of my knowledge, information, and belief, the foregoing statement contains a true, full, and complete list of all property held or belonging to me and dogs owned, kept, or harbored by me on the first day of April, including all personal property appertaining to merchandising, whether held in actual possession or only having been

I further swear that I have, to the best of my knowledge and judgment, valued said property at its true cash value, by which I mean the usual selling price, being the price which could be obtained for said property at private sale and not at forced or auction sale.

Subscribed and sworn to before me this 23rd day of May, 1893.

Copy.

The following is a list of all persons in my family and belonging to my township who are either deaf and dumb, blind, idiotic, or insane, with their names, ages, and sex, and also the name of the father, mother, or guardian, and their post-office address :

[illegible]

6—500

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EXHIBIT "E." Thos. Taggart, Auditor.

- Indiana Manufacturing Company.

The Indiana Manufacturing Company having been notified to appear before the board, and no one appearing in their interest, the board, on motion, fixed their assessment at thirty-six thousand dollars (\$36,000).

[Endorsed :] "E." 1893. In the U. S. circuit court for the district of Indiana. Indiana Mfg. Co. *vs.* S. R. Holt *et al.* No. 9066. In equity. Complainant's Exhibit 1893 Proceedings Board of Review. James A. Walsh, notary public. Filed Dec. 2, 1895. Noble C. Butler, clerk.

40

379 94 *

94 98½ *

379 94 *

95 *

284 94 *

In the U. S. Circuit Court for the District of Indiana.

INDIANA MFG. CO.)	} No. 9066. In Equity.
vs. -	
S. R. HOLT <i>et al.</i>)	

COMPLAINANT'S EXHIBIT "1892 NOTICE FOR LEVY AND SALE."
James A. Walsh, Notary Public.

Demand for Delinquent Taxes.

D 14184. TREASURER'S OFFICE (COURT-HOUSE),
INDIANAPOLIS, June 7, 1894.

M Indiana Manfg. Co.:

You are delinquent in taxes due the city, county, and State for the year 1892 in the sum of \$379.94, which my duty as treasurer requires me to collect by levy and sale of your personal property if necessary.

You will therefore find it to your advantage to pay the deputy at once and save the additional expense of levy, sales, etc.

Revised Statutes, sec. 6428.—County auditors shall not be authorized to credit the treasurer with any uncollected delinquency for which he claims credit, unless such treasurer shall show, by proper returns, verified by his oath or affirmation, that he has diligently sought for and has been unable to find any personal property from which to collect such taxes, or that, having made a levy, he was enjoined or otherwise prevented from making sale or collection, by a court of competent jurisdiction; and in all cases where he had failed to make demand upon residents who are delinquent, or to levy and sell when personal property can be found in the county out of which to make the tax, he shall be liable on his official bond for such uncollected delinquency, and ten per cent. damages thereon.

Respectfully,
No. —.

V. M. BACKUS,
City and County Treasurer.

[* In pencil in copy.]

Bring this notice with you.

669 49*

204 55*

464 94*

In the U. S. Circuit Court for the District of Indiana.

INDIANA MFG. CO. }	} No. 9066. In Equity.
vs.	
S. R. HOLT <i>et al.</i> }	

COMPLAINANT'S EXHIBIT "1893 NOTICE FOR LEVY AND SALE."
James A. Walsh, Notary Public.

Demand for Delinquent Taxes.

D 28126. TREASURER'S OFFICE (COURT-HOUSE),
INDIANAPOLIS, June 7, 1894.

M Indiana Manfg. Co.:

You are delinquent in taxes due the city, county, and State for the year 1893 in the sum of \$669.49, which my duty as treasurer requires me to collect by levy and sale of your personal property if necessary.

You will therefore find it to your advantage to pay the deputy at once and save the additional expense of levy, sales, etc.

Revised Statutes, sec. 6428.—County auditors shall not be authorized to credit the treasurer with any uncollected delinquency for which he claims credit, unless such treasurer shall show, by proper returns, verified by his oath or affirmation, that he has diligently sought for and has been unable to find any personal property from which to collect such taxes, or that, having made a levy, he was enjoined or otherwise prevented from making sale or collection, by a court of competent jurisdiction; and in all cases where he had failed to make demand upon residents who are delinquent, or to levy and sell when personal property can be found in the county out of which to make the tax, he shall be liable on his official bond for such uncollected delinquency, and ten per cent. damages thereon.

Respectfully,
No. —.

V. M. BACKUS,
City and County Treasurer.

Bring this notice with you.

[* In pencil in copy.]

41 Bring this receipt with you when you pay second installment.

Receipt No. 11617.

Indianapolis.

\$91.30.

Duplicate No. 37612.

TREASURER'S OFFICE, INDIANAPOLIS, IND., 4 M., 20, 1895.

Received of Indiana Mfg. Co. ninety-one $\frac{39}{100}$ dollars for first installment of State, county, township, and city of Indianapolis taxes for the year 1894 on poll, dog, \$11,000.00 personal property, and on—


Description of prop- erty.	Value of land.	Value of improve- ments.	Inlot.	Outlot.	Square.	Block.
.....
.....
.....
.....
.....
.....
.....
.....
.....

1st installment delinquent after 3d Monday in April.

2d installment delinquent after 1st Monday in November.

STERLING R. HOLT,

Treasurer Marion County.

 Tax-payers should examine receipt and see that descriptions are correct; that all property, both real and personal, is covered. Transfers made after April 1, 1894, do not appear in the name of the purchaser in 1895.

[Stamped across the face:] Paid Apr. 20, 1895. M. J. Murphy, cashier.

[Endorsed:] 1895. In the U. S. circuit court for the district of Indiana. Indiana Mfg. Co. vs. S. R. Holt *et al.* No. 9066. In equity. Complainant's Exhibit "1894 Tax Receipt, 1st Installment." James A. Walsh, notary public. Filed Dec. 2, 1895. Noble C. Butler, clerk.

Receipt No. 4738 D.

\$204.55.

Duplicate No. 38126.

TREASURER'S OFFICE,

MARION COUNTY, INDIANAPOLIS, IND., June 14, 1894.

Received of Indiana Manufacturing Co. the sum of two hundred & four $\frac{55}{100}$ dollars, being principal, penalty, interest, and costs of taxes delinquent for the year 1893, on account of State, county, township, and city of Indianapolis, on personal property and the following-described real estate, to wit:

Description of property.	Inlot.	Outlot.	Square.	Dogs.	
				Male.	Female.
Part paym't.....
.....
.....
.....
.....
.....
.....
.....
.....

STERLING R. HOLT, Treasurer Marion County.

[Stamped across the face:] Paid Jun-14, 1894. M. J. Murphy, cashier.

[Endorsed:] 1893. In the U. S. circuit court for the district of Indiana. Indiana Mfg. Co. vs. S. R. Holt *et al.* No. 9066. In equity. Complainant's Exhibit "1893 Tax Receipt." James A. Walsh, notary public. Filed Dec. 2, 1895. Noble C. Butler, clerk.

Preserve this receipt.

Preserve this receipt.

42 *Schedule of All the Personal Property Held by Indiana Mfg. Co., — City, Center Township, in Marion County, on the First Day of April, 1894.*

No.	Personal property—credits.	Valuation by party.	Valuation by township assessor.	Valuation by county assessor.
1	All annuities.....	None.		
2	All bonds.....			
3	All notes secured by mortgage.....			
4	All other notes.....			
5	All accounts.....	11,750		
6	All demands and claims.....	1,372		
7	All deposits in bank.....	2,369		
8	All deposits with other corporations.....	None.		
9	All deposits with individuals.....			
10	All other amounts due me from any person or corporation.....			
	Total credits due me.....	15,491		
	From the sum of the above credits I claim a deduction of the amount of my <i>bona fide</i> indebtedness, to wit.....			
	Total indebtedness which should be deducted from my credits.....	50,000		
	Leaving balance for which I should be assessed.....			
	PERSONAL PROPERTY—CHATTELS.			
1	Money on hand or on deposit, or subject to my order, check, or draft, not already entered under the title of credits.....	None.		
2	All money loaned by me and not already entered on this schedule.....			
3	All interest owing me and not entered on this schedule.....			
4	All judgments or allowances in my favor entered in any court, and which I have not already entered on this schedule; also all legacies, bequests, and other estates in expectancy.....			
5	All moneys invested in certificates of purchase at tax sales.....			
6	All money invested in certificates of purchase at sheriff's sales.....			
7	All money loaned to building, loan, and savings associations.....			
8	All shares of stock in any corporation formed outside of this State, and also all shares of stock in any corporation formed in this State and conducting its business outside of this State.....			
9	Value of goods and merchandise on hand.....	2,000		
10	Value of all articles purchased, received, or otherwise held for the purpose of being used, in whole or in part, in any process or operation of manufacturing, combining, rectifying, or refining.....			
11	Value of manufactured articles on hand.....	3,500		
12	Value of manufacturing tools, implements, and machinery (other than engines and boilers, which shall be listed as such).....	2,000		

Schedule of Personal Property, &c.—Continued.

No.	Personal property—credits, chattels.	Valuation by party.	Valuation by township assessor.	Valuation by county assessor.			
13	Value of agricultural tools, implements, and machinery.....	35					
14	Value of gold or silver plate and plated ware.....						
15	Value of diamonds and jewelry						
16	Value of household furniture and library, office ...						
17	Value of mechanical tools, law, and medical books						
18	Value of surgical instruments and medicines						
19	Value of fire-arms.....						
20	Value of poultry						
21	Value of nursery stock.....						
22	Value of property such person is required to list as pawnbroker.....						
23	Value of property of companies and corporations other than property hereinbefore enumerated.....	None.					
24	Value of property of saloons and eating-houses						
25	Value of market-garden products.....						
26	Value of home-made manufactures.....						
27	Value of slaughtered animals						
28	Every franchise and description, and value.						
29	Value of brick, stone, and all other building material on hand.....						
30	Number of steamboats, sailing vessels, wharf-boats, canal-boats, barges, or other water craft, either within or without this State, and value.....				No.		
31	Number of patent rights, and value.....				4	25,000	
32	Number of steam-engines, including boilers, and value				1		
33	Number of fire and burglar proof safes, and value.....						
34	Number of billiard, pigeon-hole, bagatelle, and other similar tables, and value.....						
35	Number of piano-fortes, and value....						
36	Number of organs and other musical instruments, and value.....						
37	Number of sewing or knitting machines, and value						
38	Number of watches and clocks, and value.....						
39	Number of carriages, wagons, coaches, hacks, carts, drays, or other vehicles, and value.....	None.					
40	Number of bicycles, tricycles, velocipedes, and value.						
41	Number of hoop-poles, and value....						
42	Number of staves and heading and heading blocks, and value.....						
43	All cooperage material and merchandise, and value						
44	Number of horses, and value.....	1	50				

Schedule of Personal Property, &c.—Continued.

No.	Personal property—chattels.	No.	Valuation by party.	Valuation by township assessor.	Valuation by county assessor.
45	Number of mules, jack and jennets, and value.....	None.			
46	Number of cattle, and value.....				
47	Number of sheep, and value.....				
48	Number of hogs, and value.....				
49	Number of stands of bees, and value.....				
50	Number of cords of wood, and value.....				
51	Bushels of coal, and value.....				
52	Bushels of lime, and value.....				
53	Bushels of wheat, and value.....				
54	Bushels of corn, and value.....				
55	Bushels of rye, and value.....				
56	Bushels of oats, and value.....				
57	Bushels of potatoes, and value.....				
			32,635 10		
58	Bushels of barley, and value.....	None.			
59	Bushels of grass and clover seed, and value.....				
60	Bushels of flaxseed, and value.....				
61	Bushels of fruit, and value.....				
62	Tons of hay, and value.....				
63	Tons of hemp, and value.....				
64	Pounds of beef, and value.....				
65	Pounds of bacon, and value.....				
66	Pounds of bulk pork, and value.....				
67	Pounds of lard, and value.....				
68	Pounds of wool, and value.....				
69	Pounds of tobacco, and value.....				
70	Pounds of hops, and value.....				
71	Pounds of maple sugar, and value.....				
72	Barrels of beef, and value.....				
73	Barrels of pork, and value.....				
74	Gallons of cider, and value.....				
75	Gallons of vinegar, and value.....				
76	Gallons of wine and whisky, and value.....				
77	Gallons of sorghum or maple molasses, and value.....				
78	Feet of lumber, and value.....				
79	Pounds of starch, and value.....				
80	Pounds of feed, and value.....				
81	Reams of paper, and value.....				
82	Pounds of pulp, and value.....				
83	Gallons of oils of all kinds, and value.....				
			32,635		

Schedule of Personal Property, &c.—Continued.

No.	Personal property—chattels.	No.	Valuation by party.	Valuation by township assessor.	Valuation by county assessor.
84	Number of scales, and value.....	1	10		
85	Number of yards of cloth, and value.				
86	Number of yards of flannel, and value.				
87	Number of blankets, and value.....				
88	Pounds of yarn, and value.....				
89	Tons of ice, and value.....				
90	Number of threshing machines, and value.....				
91	Number of corn-shellers, and value..				
92	Value of logs, timber, and all other property not specified above required to be listed.....	None.			
93	Male dogs owned or harbored by me..				
94	Female dogs owned or harbored by me..				
	Grand total.....		32,645		
	Age at last birthday.....				

Interrogatory 1. Are you, or were you, on the first day of April of the present year, the executor of the last will or the administrator of the estate of any deceased person, or the guardian of the estate of any infant or person of unsound mind, or the trustee of the property of any person, or the receiver of any corporation, association or firm, or the agent, attorney or banker investing, loaning or otherwise controlling the money or other property of any other person resident in this State, or the president or accounting officer of any corporation, or a partner, consignee or pawnbroker? If yes, designate for whom you were then, or are now acting in such representative or fiduciary capacity, and if you were, or are now acting under the authority of any particular court, name court, and also state to what court you report.

No.

Interrogatory 2. Have you, before the first day of April of the present year, either personally, or through the agency of others, caused all or any part of your taxable money or other property to be temporarily converted, either by sale, borrowing, exchange or in any other manner, into United States notes, not taxable, commonly called "greenbacks," or bonds or other securities of the United States not taxable, or any other property not taxable, with the intention to pay back, return or exchange, or sell back such property after you have made out your tax statement, for the purpose of evading the payment of taxes on such property; or did you, on or after the first day of April of the present year, and before you saw this interrogatory, pay back, return, re-exchange or sell back such property for the purpose aforesaid?

No.

Interrogatory 3. If you have converted any of your money or property, or money or property of any other person, as inquired of you, then state when the same was so converted or invested, and the kind and amount and value thereof.

No.

STATE OF INDIANA, }
Marion County, } ss:

I, Joseph K. Sharpe, Jr., sec., being duly sworn, say, to the best of my knowledge, information, and belief, the foregoing statement contains a true, full, and complete list of all property held or belonging to me and dogs owned, kept, or harbored by me on the first day of April, including all personal property appertaining to merchandising, whether held in actual possession or only having been purchased with a view to possession or profit, and all personal property appertain-

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1895.

Form No. 3.

Statement by Corporations, etc.

Under section 73 of the act concerning taxation.

Approved March 6, 1891.

SEC. 73. Tax law.—Every street railroad, water works, gas manufacturing, mining, gravel road, plank road, savings bank, insurance and other associations incorporated under the laws of this State (other than railroad companies, and those heretofore specially designated), shall, by its president or other proper accounting officer, between the first day of April and the first day of June of the current year, in addition to the other property required by this act to be listed, make out and deliver to the assessor a sworn statement of the amount of its capital stock, setting forth particularly, etc. (The terms printed in statement below.)

In case of the failure or refusal to make report, such corporation shall forfeit and pay one hundred dollars for each additional day such report is delayed beyond the first of June, to be sued and recovered in any proper form of action, in the name of the State of Indiana, on the relation of the prosecuting attorney, such penalty, when collected, to be paid into the county treasury. And such prosecuting attorney in every case of conviction shall be allowed a docket fee of ten dollars, to be taxed as costs on such action.

Statement by the Indiana Manufacturing Company of capital stock, etc., as required by section 73 of an act of the legislature of the State of Indiana entitled "An act concerning taxation," approved March 6, 1891.

First.	{ Name of company or association, The Indiana Manufacturing Company. Location of company or association, Indianapolis, Ind. The principal office or place of business is in the cor. Missouri St. & Union tracks.	
		Amount.
Second.	{ Amount of capital stock authorized..... No. of shares in which capital stock is divided..... No. 7,200	\$360,000 00
Third.	{ Amount of capital stock paid up..... No. of shares actually issued.... No. 7,200 Market value of the shares of stock; don't know. If no market value, then the actual value.	
Fourth.	{ The entire capital stock was issued in exchange for certain patent rights or letters patent and has no value except such as it derives from such patent rights. The tangible property of the corporation is not sufficient to meet its indebtedness.	

Fifth.	The total amount of indebtedness, except the indebtedness for the current expenses, excluding from such expenses the amount paid for the purchase or improvement of property.			\$50,000 00
		Lands within the State	None.	
		Lots within the State.	None.	
		Personal property within the State...	10,137 00	
		Total within the State...	10,137 00	
Sixth.	{ The value of all tangible property.	Lands without the State.....	None.	
		Lots without the State.	None.	
		Personal property without the State..	None.	
		Total without the State.....	None.	
Seventh.	The difference in value between all tangible property and the capital stock...			39,863 00
Eighth.	The name and value of each franchise or privilege owned or enjoyed by such corporation.			

Interrogatory 1. Are you, or were you, on the first day of April of the present year, the executor of the last will or the administrator of the estate of any deceased person, or the guardian of the estate of any infant or person of unsound mind, or the trustee of the property of any person, or the receiver of any corporation, association or firm, or the agent, attorney or banker investing, loaning or otherwise controlling the money or other property of any other person resident in this State, or the president or accounting officer of any corporation, or a partner, consignee or pawnbroker? If yes, designate for whom you were then, or are now acting in such representative or fiduciary capacity, and if you were, or are now acting under the authority of any particular court, name court, and also state to what court you report.

No.

Interrogatory 2. Have you, before the first day of April of the present year, either personally, or through the agency of others, caused all or any part of your taxable money or other property to be temporarily converted, either by sale, borrowing, exchange, or in any other manner, into United States notes, not taxable, commonly called "greenbacks," or bonds or other securities of the United States not taxable, or any other property not taxable, with the intention to pay back, return or exchange, or sell back such property after you have made out your tax statement, for the purpose of evading the payment of taxes on such property; or did you, on or after the first day of April of the present year, and before you saw this interrogatory, pay back, return, re-exchange or sell back property for the purpose aforesaid?

No.

Interrogatory 3. If you have converted any of your money or property, or money or property of any other person, as inquired of you, then state when the same was so converted or invested, and the kind and amount and value thereof.

No.

I, Joseph K. Sharpe, Jr., sec'y & treas., do solemnly swear that the above statement is true according to the best of my knowledge and belief.

JOSEPH K. SHARPE, JR., *Sec.*

Subscribed and sworn to before me this 30 day of April, 1895.

GEO. WOLF.

NOTE.—These statements to be scheduled by the assessor and returned to the county auditor.

[Endorsed:] 1895. Form No. 3. Statement by the *the* Indiana Manufacturing Company (Under section 73.) County of Marion, city or town of Indianapolis, township of Centre. Returned by the assessor and filed in the office of the county auditor this — day of —, 189—. — —, county auditor. ~~Ex-2~~ These statements should be arranged in alphabetical order and numbered. They should then be scheduled by the assessor, and said schedule and statements returned to the county auditor when the report of assessment is made. This statement to be filed with county auditor. In the U. S. circuit court for the district of Indiana. Indiana Mfg. Co. vs. S. R. Holt *et al.* No. 9066. In equity. Complainant's Exhibit "1895 Tax Statement." James A. Walsh, notary public. Filed Dec. 2, 1895. Noble C. Butler, clerk.

44 *Schedule of All the Personal Property Held by — —, — Township, Marion County, Indiana, on the First Day of April, 1895.*

No.	Personal property—credits.	Valuation by party.	Valuation by township assessor.	Valuation by county assessor.
1	All annuities			
2	All bonds			
3	All notes secured by mortgage			
		15,211		
		515		
4	All other notes	15,726		
5	All accounts	7,165		
6	All other amounts due me from any person, firm, or corporation except for money deposited with banks, corporations, firms, or individuals			
	Total credits due me	22,891		

Schedule of Personal Property, &c.—Continued.

No.	Personal property—credits, chattels.	Valuation by party.	Valuation by township assessor.	Valuation by county assessor.
	From the sum of the above credits I claim a deduction of the amount of my <i>bona fide</i> indebtedness, as follows: Value of all notes owing by me..... Value of all accounts owing by me..... Total <i>bona fide</i> indebtedness which should be deducted from my credits.....	50,000		
	Leaving balance for which I should be assessed			
	PERSONAL PROPERTY—CHATELLE.			
1	Money on hand or on deposit, or subject to my order, check, or draft, including circulating notes of national banking associations and United States legal-tender notes and other notes and certificates of the United States payable on demand and circulating, or intended to circulate, as currency, and gold, silver, or other coin.....	2,392		
2	All money loaned by me and not already entered on this schedule.....			
3	All interest owing me and not entered on this schedule			
4	All judgments and allowances in my favor entered in any court, and which I have not already entered on this schedule; also all legacies, bequests, and other estates in expectancy.....			
5	All moneys invested in certificates of purchase at tax sales			
6	All moneys invested in certificates of purchase at sheriff's sales.			
7	All moneys loaned to building, loan, and savings associations.....			
8	All shares of stock in any corporation formed outside of this State, and also all shares of stock in any corporation formed in this State and conducting its business outside of this State			
9	Value of goods and merchandise on hand.....	2,200		
10	Value of all articles purchased, received, or otherwise held for the purpose of being used, in whole or in part, in any process or operation of manufacturing, combining, rectifying, or refining.....			
11	Value of manufactured articles on hand	3,500		
12	Value of manufacturing tools, implements, and machinery (other than engines and boilers, which shall be listed as such)	1,700		
13	Value of agricultural tools, implements, and machinery.....			
14	Value of gold or silver plate and plated ware.....			
15	Value of diamonds and jewelry			
16	Value of household furniture and library, office	35		
17	Value of mechanical tools, law and medical books, surgical instruments, and medicines.....			
18	Value of fire-arms.....			
19	Value of poultry			

Schedule of Personal Property, &c.—Continued.

No.	Description of property—chattels.	Valuation by party.	Valuation by township assessor.	Valuation by county assessor.
20	Value of nursery stock.....			
21	Value of property such person is required to list as pawnbroker.....			
22	Value of property of companies and corporations other than property hereinbefore enumerated....			
23	Value of property of saloons and eating-houses.....			
24	Value of market-garden products.....			
25	Value of home-made manufactures.....			
26	Value of slaughtered animals.....			
27	Every franchise and description, and value.....			
28	Value of brick, stone, and all other building material on hand.....			
		No.		
29	Number of steamboats, sailing vessels, wharf-boats, canal-boats, barges, or other water craft, either within or without this State, and value.....			
30	Number of patent rights, and value. We are advised that patent rights are not taxable, and therefore decline to state any value for them*.....			
31	Number of steam-engines, including boilers, and value.....			
32	Number of fire and burglar proof safes, and value.....	1	50	
33	Number of billiard, pigeon-hole, bagatelle, and other similar tables, and value.....			
34	Number of piano-fortes, and value.....			
35	Number of organs and other musical instruments, and value.....			
36	Number of sewing or knitting machines, and value.....			
37	Number of watches and clocks, and value.....			
38	Number of carriages, wagons, coaches, hacks, carts, drays, or other vehicles, and value....	1	75	
39	Number of bicycles, tricycles, velocipedes, and value.....			
40	Number of hoop-poles, and value.....			
41	Number of staves and heading and heading blocks, and value.....			
42	All cooperage material and merchandise, and value.....			
43	Number of horses, and value.....	1	25	
44	Number of mules, jacks and jennets, and value.....			
45	Number of cattle, and value.....			
46	Number of sheep, and value.....			
47	Number of hogs, and value.....			
48	Number of stands of bees, and value.....			
49	Number of cords of wood, and value.....			
50	Bushels of coal, and value.....			
51	Bushels of lime, and value.....			

* 30. Returned by deputy assessor in 1894: No. patent rights and value, 4, \$25,000. John W. McDonald.

Schedule of Personal Property, &c.—Continued.

No.	Description of property.	No.	Valuation by party.	Valuation by township assessor.	Valuation by county assessor.
52	Bushels of wheat, and value.				
53	Bushels of corn, and value.				
54	Bushels of rye, and value.				
55	Bushels of oats, and value.				
			9,977		
			9,977		
56	Bushels of potatoes, and value.				
57	Bushels of barley, and value.				
58	Bushels of grass and clover seed, and value. ...				
59	Bushels of flaxseed, and value.				
60	Bushels of fruit, and value.				
61	Tons of hay, and value.				
62	Tons of hemp, and value.				
63	Pounds of beef, and value.				
64	Pounds of bacon, and value.				
65	Pounds of bulk pork, and value.				
66	Pounds of lard, and value.				
67	Pounds of wool, and value.				
68	Pounds of tobacco, and value.				
69	Pounds of hops, and value.				
70	Pounds of maple sugar, and value.				
71	Barrels of beef, and value.				
72	Barrels of pork, and value.				
73	Gallons of cider, and value.				
74	Gallons of vinegar, and value.				
75	Gallons of wine and whisky, and value.				
76	Gallons of sorghum or maple molasses, and value.				
77	Feet of lumber, and value.		150		
78	Pounds of starch, and value.				
79	Pounds of feed, and value.				
80	Reams of paper, and value.				
81	Pounds of pulp, and value.				
82	Gallons of oils of all kinds, and value.				
83	Number of scales, and value.	1	10		
84	Number of yards of cloth, and value.				
85	Number of yards of flannel, and value.				
86	Number of blankets, and value.				
87	Pounds of yarn, and value.				
88	Tons of ice, and value.				
89	Number of threshing machines, and value.				
90	Number of corn-shellers, and value.				
91	Value of logs, timber, and all other property not specified above required to be listed ..				
92	Male dogs owned or harbored by me.				
93	Female dogs owned or harbored by me.				
	Grand total.		10,137		
	Age April 1, 1895.				

Interrogatory 1. Are you, or were you, on the first day of April of the present year, the executor of the last will or the administrator of the estate of any deceased person, or the guardian of the estate of any infant or person of unsound mind, or the trustee of the property of any person, or the receiver of any corporation, association or firm, or the agent, attorney or banker investing, loaning or otherwise controlling the money or other property of any other person resident in this State, or the president or accounting officer of any corporation, or a partner, consignee or pawnbroker? If yes, designate for whom you were then, or are now acting in such representative or fiduciary capacity, and if you were, or are now acting under the authority of any particular court, name court, and also state to what court you report.

No.

Interrogatory 2. Have you, before the first day of April of the present year, either personally, or through the agency of others, caused all or any part of your taxable money or other property to be temporarily converted, either by sale, borrowing, exchange or in any other manner, into bonds or other securities of the United States not taxable, or any other property not taxable, with the intention to pay back, return or exchange, or sell back such property after you have made out your tax statement, for the purpose of evading the payment of taxes on such property; or did you, on or after the first day of April of the present year, and before you saw this interrogatory, pay back, return, re-exchange or sell back such property for the purpose aforesaid?

No.

Interrogatory 3. If you have converted any of your money or property, or money or property of any other person, as inquired of you, then state when the same was so converted or invested, and the kind and amount and value thereof.

No.

STATE OF INDIANA,)
Marion County,) ss:

I, —, being duly sworn, say, to the best of my knowledge, information, and belief, the foregoing statement contains a true, full, and complete list of all property held or belonging to me and dogs owned, kept, or harbored by me on the first day of April, including all personal property appertaining to merchandising, whether held in actual possession or only having been purchased with a view to possession or profit, and all personal property appertaining to manufacturing, and all manufactured articles, whether on hand or owned by me. In all cases where I have been unable to exhibit certain classes of property to the assessor, such property has been fully and fairly described and its true condition and value represented. That I have in no case sought to mislead the assessor as to either quantity or quality or value of property, and that the deductions claimed from credits are *bona fide* debts for a consideration received, and do not consist in any part in bonds, notes, or obligations of any kind given to any insurance company on account of premium or policies, nor on account of any unpaid subscriptions to any literary, scientific, or charitable institution or society, nor on account of any subscription to or indebtedness payable on capital stock of any company, whether incorporated or unincorporated; and I further swear that since the first day of April of last year I have not, directly or indirectly, converted or exchanged any of my property temporarily for the purpose of evading the assessment thereof for taxes into non-taxable property or securities of any kind.

I further swear that I have, to the best of my knowledge and judgment, valued said property at its true cash value, by which I mean the usual selling price, being the price which could be obtained for said property at private sale and not at forced or auction sale.

JOSEPH K. SHARPE, JR., Sec.

Subscribed and sworn to before me this 30 day of April, 1895.

GEO. WOLF, Assessor,
By —, Deputy.

To the assessor:

The following is a list of all persons in my family and belonging to my township who are either deaf and dumb, blind, idiotic, or insane, with their names, ages,

covered in any proper form of action, in the name of the State of Indiana, on the relation of the prosecuting attorney, such penalty, when collected, to be paid into the county treasury. And such prosecuting attorney in every case of conviction shall be allowed a docket fee of ten dollars, to be taxed as costs on such action.

Statement by the Indiana Mfg. Co. of capital stock, etc., as required by section 73 of an act of the legislature of the State of Indiana entitled "An act concerning taxation," approved March 6, 1891.

First.	{ Name of company or association, The Indiana Mfg. Co. Location of company or association, Indianapolis, Ind. The principal office or place of business is in the 7 Board Trade b'lding.	
		Amount.
Second.	{ Amount of capital stock authorized No. of shares in which capital stock is divided	\$360,000 No. 7,200
Third.	{ Amount of capital stock paid up No. of shares actually issued	No. 7,200
Fourth.	{ Market value of the shares of stock; none on the market If no market value, then the actual value	36,000 00
Fifth.	The total amount of indebtedness, except the indebtedness for the current expenses, excluding from such expenses the amount paid for the purchase or improvement of property	50,000 00
	Lands within the State. None. Lots within the State. . None. Personal property within the State	\$32,645
Sixth.	{ The value of all tangible property.	Total within the State . . . Lands without the State. None. Lots without the State. . None. Personal property without the State Total without the State None.
Seventh.	The difference in value between all tangible property and the capital stock	12,904
Eighth.	The name and value of each franchise or privilege owned or enjoyed by such corporation	

Interrogatory 1. Are you, or were you, on the first day of April of the present year, the executor of the last will or the administrator of the estate of any deceased person, or the guardian of the estate of any infant or person of unsound mind, or the trustee of the property of any person, or the receiver of any corporation, association or firm, or the agent, attorney or banker investing, loaning or otherwise

controlling the money or other property of any other person resident in this State, or the president or accounting officer of any corporation, or a partner, consignee or pawnbroker? If yes, designate for whom you were then, or are now acting in such representative or fiduciary capacity, and if you were, or are now acting under the authority of any particular court, name court, and also state to what court you report.

No.

Interrogatory 2. Have you, before the first day of April of the present year, either personally, or through the agency of others, caused all or any part of your taxable money or other property to be temporarily converted, either by sale, borrowing, exchange, or in any other manner, into United States notes, not taxable, commonly called "greenbacks," or bonds or other securities of the United States not taxable, or any other property not taxable, with the intention to pay back, return or exchange or sell back such property after you have made out your tax statement, for the purpose of evading the payment of taxes on such property; or did you, on or after the first day of April of the present year, and before you saw this interrogatory, pay back, return, re-exchange or sell back property for the purpose aforesaid?

No.

Interrogatory 3. If you have converted any of your money or property, or money or property of any other person, as inquired of you, then state when the same was so converted or invested, and the kind and amount and value thereof.

No.

I, Joseph K. Sharpe, Jr., sec., do solemnly swear that the above statement is true according to the best of my knowledge and belief.

JOSEPH K. SHARPE, JR., *Sec.*

A. A. McKAIN, *Pres't.*

Subscribed and sworn to before me this 1st day of June, 1894.

GEORGE WOLF, *Ass'r.*

FRANK BYRKIT, *Dep'ty.*

NOTE.—These statements to be scheduled by the assessor and returned to the county auditor.

[Endorsed:] Copy. 1894. Form No. 3. Statement by the Indiana Mfg. Company (under section 73). County of —, city or town of —, township of —. Returned by the assessor and filed in the office of the county auditor this — day of —, 189—. — —, county auditor. \$36,000.00. Joel A. Baker, pres. ~~These~~ These statements should be arranged in alphabetical order and numbered. They should then be scheduled by the assessor and said schedule and statements returned to the county auditor when the report of assessment is made. This statement to be filed with county auditor. In the U. S. circuit court for the district of Indiana. Indiana Mfg. Co. vs. S. R. Holt *et al.* No. 9066. In equity. Complainant's Exhibit "1894 Tax Statement." James A. Walsh, notary public. Filed Dec. 2, 1895. Noble C. Butler, clerk.

The within is a true copy of the statement by the Indiana Mnf^g Co. for the year 1894, as appears of record in my office.

Witness my hand & official seal July 13, 1894.

[Commissioners' Seal of Marion County, Indiana]

THOMAS TAGGART,
Auditor Marion Co., Ind.

Receipt No. 4737 D.
Duplicate No. 38126.

\$95.00.

TREASURER'S OFFICE.

MARION COUNTY, INDIANAPOLIS, IND., June 14, 1894.

Received of Indiana Manufacturing Co. the sum of ninety-five ¹⁰⁰ dollars, being principal, penalty, interest, and costs of taxes delinquent for the year 1892, on account of State, county, township, and city of Indianapolis, on personal property and the following-described real estate, to wit:

Preserve this receipt.

Description of property.	Inlot.	Outlot.	Square.	Dogs.	
				Male.	Female.
Pt paym't.					
.....					
.....					
.....					
.....					
.....					
.....					
.....					

STERLING R. HOLT,
Treasurer Marion County.

[Stamped across the face:] Paid Jun- 14, 1894. M. J. Murphy, cashier.

[Endorsed:] 1892. In the U. S. circuit court for the district of Indiana. Indiana Mfg. Co. *vs.* S. R. Holt *et al.* No. 9066. In equity. Complainant's Exhibit "1892 Tax Receipt." James A. Walsh, notary public. Filed Dec. 2, 1895. Noble C. Butler, clerk.

46 UNITED STATES OF AMERICA, }
District of Indiana, } ss:

I, Noble C. Butler, clerk of the circuit court of the United States within and for said district, do hereby certify that the above and foregoing is a full, true, and complete transcript of the record in the cause of The Indiana Manufacturing Company against Sterling R. Holt *et al.*, as fully as the same appears upon the records and files now in my office.

Witness my hand and the seal of said court, at Indianapolis, in said district, this 8th day of October, A. D. 1897.
Seal Circuit Court of the United States, District of Indiana.

NOBLE C. BUTLER, *Clerk.*

Endorsed on cover: Case No. 16,713. Indiana C. C. U. S. Term No., 500. Sterling R. Holt, Joel A. Baker, Thomas Taggart, George Wolf, William A. Bell, and Charles A. Stuckmeyer, appellants, *vs.* The Indiana Manufacturing Company. Filed November 1, 1897.



500

In the Supreme Court of the United States.

STERLING R. HOLT ET AL., Appellants, <i>vs.</i> THE INDIANA MANUFACTURING COMPANY, Ap- pellee.	}	No. 191, October Term, 1898.
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Appeal from the circuit court of the United States for the district of Indiana.

Stipulation.

It is hereby stipulated and agreed by and between the parties hereto, by their counsel, that the following, to wit:

“The court finds the facts set forth in the complainant's bill of complaint to be true and proved. A decree may be prepared adjudging for plaintiff as prayed, and also to embody a perpetual injunction against defendants as prayed, with costs, to be taxed against them”

is a true and correct copy of the order of the circuit court of the United States for the district of Indiana made in said cause upon the final hearing thereof.

And that the following, to wit:

COMPLAINANT'S EXHIBIT “1894 PROCEEDINGS BOARD OF REVIEW.”

The Indiana Manufacturing Company.

CHESTER BRADFORD, representing the Indiana Manufacturing Company, appearing before the board, made the following statement:

Mr. BRADFORD: I wish to make a statement to you concerning the general question of the taxation of letters patent of the United States. I wish to make a little argument on that proposition. A patent is a franchise granted by the Government of the United States, is not tangible property and cannot be taxed by any State authorities. I have authorities as to that proposition.

Mr. HOLT: Your capital stock is \$360,000?

Mr. BRADFORD: That is pretty nearly all wind.

Q. 1. What are the patents included at?

A. \$25,000.

Q. 2. The balance is cash, the balance is tangible property, actual value?

A. Yes, the remainder of the return is justly taxable. The patents we hold are not justly taxable.

Q. 3. Where is the other tangible property?

A. It is some machinery in the shop across the river, thrashing

machines, straw-stackers, office furniture and one thing and another.

Q. 4. This represents the value of the patent, \$25,000 ?

A. That is the value of their patent.

Q. 5. The capital stock is \$360,000 and \$25,000 of that is included in the patent ?

A. Of all the value returned \$25,000 is on account of the patents.

Q. 6. That would leave \$335,000 of paid-up capital stock ?

Q. 6. What is it represented by ?

A. My recollection at the organization nothing was paid in, the patents were turned in for the capital stock.

Q. 8. It is claimed they were turned in for \$25,000 ?

A. I have not claimed they were turned in for \$25,000, that is simply the valuation now.

Q. 9. I asked you what it was and you said \$25,000 ?

A. That is the value placed upon them at the present time. The stock was only estimated to be worth 10 cents on the dollar, and \$25,000 from \$36,000 would leave substantially the present value of the actual tangible property.

Q. 10. With those figures what would be left ?

A. \$11,000.

Q. 11. What was it assessed at last year ?

Mr. BAKER: At \$36,000.

Mr. BRADFORD: These questions of what the property is worth you can get at that better from Mr. McKain, who will be here presently. The only proposition I wish to argue is whether patents are taxable. I am not here for any other purpose. Mr. McKain is the business man and knows as to the value of the property.

Mr. HOLT: We make our assessment upon the value of the stock.

Mr. BRADFORD: You cannot take into consideration the value of the patents in passing upon the value of the stock.

Mr. HOLT: We tax the value of the capital stock. Are these patents any advantage to your company ?

Mr. BRADFORD: Of course, that is what they are held for.

Mr. HOLT: It helps increase the value of your capital stock.

Mr. BRADFORD: If I held it it would help to increase my income, but I could not be taxed for it on a capital basis because it produces me an income.

Mr. TAGGART: There is one question here "If no market value then the actual value of your stock \$36,000." You cannot get away from that question. We are not bothering your patents. The patents are not taken into consideration.

Mr. BRADFORD: The patents are taken into consideration.

Mr. TAGGART: Who taxed it ?

Mr. BRADFORD: The assessor.

Mr. TAGGART: How did he arrive at the valuation of your capital stock, the assessor does not arrive at that, the owners or the corporation usually arrive at that themselves. Who made this list out ?

Mr. BRADFORD: I am sure I do not know.

Mr. TAGGART: Who signed it?

Mr. BRADFORD: Joseph Sharpe.

Mr. A. A. McKAIN and Mr. JOSEPH SHARPE, appearing on behalf of the Indiana Manufacturing Company, Mr. McKain made the following answers to questions asked:

Mr. HOLT: What is the stock worth?

Mr. McKAIN: I would not want to take anything like this for mine.

Mr. HOLT: What do you think it is worth on the dollar; is it worth par?

Mr. McKAIN: Yes, sir; I think it is.

Mr. HOLT: What is the capital stock?

Mr. McKAIN: \$360,000. I would just as soon you would assess it at that as \$36,000.

Mr. BRADFORD: On what property basis do you say that?

Mr. McKAIN: On the ground of the value of the patents.

Mr. BRADFORD: Outside of the value of the patents what is it worth?

Mr. McKAIN: The tangible property, whatever that shows. That is only a tool to use the patents.

Mr. HOLT: If the stock is worth par it is our duty to assess it as par. You come in here and make an affidavit that it is worth par, I don't see what else we can do.

Mr. BRADFORD: He has said to you it is only worth what he claims it to be on account of the ownership of the patents.

Mr. HOLT: That makes the stock valuable.

Mr. BRADFORD: As counsel I had a right to ask him questions and he a right to answer.

Mr. HOLT: I asked him what the stock was worth, and if it was worth par, and he said that it was.

It is moved and seconded that the assessment of the Indiana Manufacturing Company be fixed, as returned, at thirty-six thousand (\$36,000.00) dollars.

Mr. BRADFORD: To make a record, I desire to move you that the amounts assessed against this corporation for the year 1892 be abated to the amounts shown by the actual tangible property, excluding the patents. I wish to make a further motion before you that the amount assessed against this company for the year 1893 be abated to the tax assessable on the actual property, excluding the valuation of patents, which that year, the same as this, were put in by the assessor at \$25,000.

Mr. TAGGART: How did the assessor arrive at the valuation of the patent?

Mr. BRADFORD: I have not the remotest idea how he arrived at it.

Mr. TAGGART: It is the opinion of the board that it has no power to act on the question that Mr. Bradford presents.

Mr. HOLT: The way to do is to appeal from this board.

Mr. BRADFORD: We have other appeals. I think perhaps, this being a Federal question, I will file a suit in the United States court.

Mr. HOLT: This board was not in existence at that time; we have no authority to act.

was an exhibit duly introduced in evidence in said cause as Complainant's Exhibit "1894 Proceedings Board of Review."

Which said papers appear to have been inadvertently omitted from the transcript as prepared and certified by the clerk of said circuit court.

And it is hereby further stipulated and agreed that this stipulation shall have the same force and effect for the purpose of making said order and said exhibit a part of the record herein as though the same had been included in said transcript of record.

W. L. TAYLOR,
Of Counsel for Appellants.
CHESTER BRADFORD,
Counsel for Appellee.

Indianapolis, Ind., Jan. 18, 1899.

[Endorsed:] October term, 1898. No. 191. U. S. Supreme Court. S. R. Holt *et al.* vs. Indiana Manufg. Company. Stipulation. Chester Bradford, patent lawyer, suite 1235, Stevenson building, Indianapolis, Ind.

[Endorsed:] File No. 16,713. Supreme Court U. S., October term, 1898. Term No., 191. Sterling R. Holt & *al.*, app'ts, vs. The Indiana Manfg. Co. Stipulation and addition to record. Filed Jan'y 20, 1899.

1:500, 1910
Brief of Ketcham for Appellants

Filed Jan. 10, 1898.
IN THE SUPREME COURT
OF THE UNITED STATES.

OCTOBER TERM, 1897.

STERLING R. HOLT ET AL.,	}	No. 500.
Appellants,		
vs.		
THE INDIANA MANUFACTURING COMPANY,		
Appellee.		

BRIEF FOR APPELLANTS ~~FOR~~ MOTION TO
DISMISS CAUSE.

WILLIAM A. KETCHAM,
Counsel for Appellants.
ALFRED R. HOVEY,
Of Counsel.

IN THE SUPREME COURT

OF THE UNITED STATES.

OCTOBER TERM, 1897.

STERLING R. HOLT ET AL.,	}	No. 500.
Appellants,		
<i>vs.</i>		
THE INDIANA MANUFACTURING COMPANY,		
Appellee.		

BRIEF BY APPELLANTS ON MOTION OF AP-
PELLEE TO DISMISS FOR WANT
OF JURISDICTION.

This was a bill in equity, in the United States Circuit Court, to enjoin certain officers from the collection of taxes that had been levied and assessed against the appellee, on the ground that the levy and assessment was void, being in contravention of the constitution of the United States, in that it had attempted to levy a tax upon certain patents held by the appellee granted by the United States, which patents were not subject to taxation.

The appellee is an association incorporated under the manufacturing and mining laws of the State of In-

diana. The plan of taxation of the State of Indiana as to domestic corporations incorporated under the manufacturing and mining laws is to assess against them the value of their tangible property, in case the value of the tangible property exceeds the value of the capital stock, and to assess against them the value of the capital stock in case it exceeds the value of the tangible property. In other words, to reach the values represented by its capital stock without reference to the manner in which it is invested. The plan further provides a local board in each county for the assessment of the property of the corporations existing in that county, and authorizing an appeal to the State Board of Tax Commissioners to any and all persons assessed by the County Board of Review in the event it is supposed that their assessment is excessive. Upon the assesment as shown by the records in the years preceding 1895, the appellee made no effort whatever to appeal from the assessment by the County Board of Review to the State Board of Tax Commissioners, but simply refused to pay the taxes and finally applied to the United States Circuit Court for an injunction against the collection of the taxes on the ground that the laws of the State in that respect contravened the United States Constitution, and a decree was entered perpetually enjoining the collection of the tax.

The appellants upon the theory that the question was rather a question of excessive taxation than of constitutional law, (for if the value of the patents was not in law assessable the assessment was simply excessive, in which event the remedy was by appeal to

the State Board of Tax Commissioners from the excessive assessment rather than to the Circuit Court of the United States to review the action of the assessing officers), prayed an appeal to the Circuit Court of Appeals. This was supposed to be in harmony with the opinion of the Chief Justice, in *Green v. Mills*, 16 Circuit Court of Appeals Reports, 516; S. C. 69 Fed. Rep. 852, in which it was held that, while undoubtedly the Circuit Court of Appeals has no jurisdiction to pass upon constitutional questions, if the case could be disposed of without passing upon the constitutional questions, that court would take and exercise jurisdiction.

The Circuit Court of Appeals, however, was of the opinion that the only question presented by the record was the question of the constitutionality of the State law, and dismissed the appeal.

Holt et al. v. Indiana Mfg. Co., 80 Fed Rep. 1.

Thereupon, this appeal was prayed to this court where we are confronted with the motion to dismiss on the ground that the appeal not having been taken within a year from the time of the entry of the final decree, under the last sentence of the last paragraph of section 6, of the act of March 3, 1891, this court is without jurisdiction. It is conceded in the brief of appellee on the motion to dismiss, Appellee's Brief, page 7: "This court undoubtedly has jurisdiction of the question involved in this case," but it is insisted that it has no jurisdiction of the present case for the reason that an appeal was not taken within the statutory

time, so that the sole question presented by this motion to dismiss is whether the last sentence in the last clause of section 6,

“But no such appeal shall be taken or writ of error sued out unless within one year after the entry of the order, judgment, or decree sought to be reviewed,”

applies generally to all appeals to the Supreme Court from the Circuit Court, or whether it applies alone to appeals from the Circuit Court of Appeals to the Supreme Court.

If section 1008, of the Revised Statutes of the United States authorizing appeals from the Circuit Court of the United States to be taken within two years is still in force, this appeal is properly taken. If it is repealed by the Evarts act, and it is required that all appeals from the Circuit Court must be taken within a year, the appeal is not properly taken and the motion to dismiss should be sustained. It will be noted in the outset that this language, indeed, this entire section does not profess or purport in terms to amend or repeal section 1008 of the Revised Statutes. If it is repealed it is a repeal by implication and repeals by implication are not favored.

Sutherland on Statutory Construction, section 138, p. 179.

Sedgewick on Construction of Statutory and Constitutional Law, p. 98, note *a*.

Hartford v. U. S., 8 Cranch. 109.

Wood v. U. S., 16 Pet. 341.

Arthur v. Homer, 96 U. S. 137.

Chew Heong v. U. S., 112 U. S. 536.

McCool v. Smith, 1 Black. 459.

Henderson's Tobacco, 11 Wall. 652.

On behalf of the appellants it is insisted that the language at the end of section 6, of the Evarts act (Acts of the 51st Congress, section 2, chapter 517, page 828), applies only to cases of appeal or writs of error to the Supreme Court from final decrees or judgments in the Circuit Court of Appeals; and this presents the question of the proper construction of the act of 1891.

Section 1 of the act provides for the appointment of an additional Circuit Judge. Section 2, for the creation of a Circuit Court of Appeals. Section 3, for the constitution of the court. Section 4 abolishes the appeal from District to Circuit Courts and substitutes in lieu thereof an appeal in proper cases respectively to the Supreme Court or the Circuit Court of Appeals. Section 5 provides for the appellate jurisdiction of the Supreme Court where the appeal is directly from the Circuit Court or District Court, and gives to that court jurisdiction over "the weightier matters of the law," namely, questions of jurisdiction, final sentences in prize cases, felonies, and constitutional questions. Section 6 provides for the jurisdiction of the Circuit Court of Appeals, and confers upon it appellate jurisdiction in all cases other than those to which exclusive appellate jurisdiction is originally conferred upon the Supreme Court. In connection therewith, however, the section provides that the decree of the Circuit Court of Appeals shall be final in the less important cases, namely, where the jurisdiction depends

entirely upon diverse citizenship, or the case arises under patent, revenue, criminal, and admiralty laws. As to each of these the decision of the Appellate Court is made final, except in two instances.

1. Where the Appellate Court desires the information or assistance of the Supreme Court, in which case the Appellate Court is authorized to certify to the Supreme Court certain questions or propositions of law concerning which it desires instructions from the Supreme Court, and in such cases the Supreme Court may answer the question, or take jurisdiction of the entire record and all the questions involved in it.

2. That the Supreme Court may without any suggestion or action by the Circuit Court of Appeals, in a proper case direct the case to be certified to it for its review and determination with the same power and authority as if it had been carried by appeal or writ of error originally to the Supreme Court.

The section then continues—and it should be borne in mind that the section is devoted to the question of jurisdiction, first, of the Circuit Court of Appeals, second, as to the finality of that jurisdiction, and third, as to the questions over which the Supreme Court will exercise revisory jurisdiction over the action of the Circuit Court of Appeals—

“In all cases not hereinbefore, in this section, made final, there shall be of right an appeal or writ of error or review of the case by the Supreme Court of the United States where the matter in controversy shall exceed one thousand dollars besides costs.”

Upon this language the question arises, to what does it refer. Appellee's contention is and must be that it must be taken in the broad sense, and is intended to describe the appellate or revisory jurisdiction of the Supreme Court. The contention of appellants, however, is that it is to be construed with, as a part of, and limited by, the language of section 6. Abundant provision is made in section 5 for the appellate jurisdiction of the Supreme Court. Abundant provision is made wholly without reference to this language in the earlier part of section 6 for the appellate jurisdiction of the Circuit Court of Appeals. If this language is to be construed as defining the cases in which there shall be in the first instance an appeal to the Supreme Court, the language used is supererogatory, for that has sufficiently been described in section 5, and in that event the language quoted "not hereinbefore in this section made final" is not only superfluous, but is contradictory of the general statute, if the Supreme Court has not, other than as provided in the two exceptions named in section 6, appellate jurisdiction over any case, jurisdiction over which is conferred upon the Circuit Court of Appeals in the first instance.

We insist that the language of the first clause of the last paragraph of section 6,

"In all cases not hereinbefore in this section made final, there shall be of right an appeal or writ of error or review of the case by the Supreme Court of the United States where the matter in controversy shall exceed one thousand dollars besides costs,"

applies to those cases, appellate jurisdiction over which is conferred on the Circuit Court of Appeals, where, by this section, the decree of the Circuit Court of Appeals is not made final. It is obvious from the language of section 6 that there are some cases at least in which the decision of the Circuit Court of Appeals is not final, or the language used in the latter part of the first sentence in the section "shall be final in all cases in which the jurisdiction is dependent entirely," etc., would not have been used, but in lieu thereof the language would have been in substance "shall be final in all such cases," leaving the first and second exceptions to stand.

If the appellate jurisdiction of the Circuit Court of Appeals was confined to those cases in which it is in terms provided that its decree shall be final, there would be some force in the contention that the language of the last paragraph in the section did not refer to appeals and writs of error from the Circuit Court of Appeals to the Supreme Court; but it is clear that there are a great many cases in which appellate jurisdiction is conferred upon the Circuit Court of Appeals, where its decision is not made final.

For example: Appeals are granted from the final judgment of the District Court, under the Evarts act, not as heretofore to the Circuit Court, but directly to the Circuit Court of Appeals, in the following cases:

a. "Suits for penalties and forfeitures incurred under any law of the United States." (Revised Statutes of the United States, section 563, Specification 3d.)

b. "Suits at common law brought by the United States, or by any officer thereof, authorized by law to sue." (*Ib.* Specification 4th.)

c. "Causes of action arising under the postal laws of the United States." (*Ib.* Specification 7th.)

d. "Suits by the assignee of any debenture for drawback of duties, issued under any law for the collection of duties, against the person to whom such debenture was originally granted, or against any endorser thereof, to recover the amount of such debenture." (*Ib.* Specification 10th.)

e. "Suits authorized by law to be brought by any person for the recovery of damages, on account of any injury to his person or property, or of the deprivation of any right or privilege of the citizen of the United States by any act done in furtherance of any conspiracy mentioned in section nineteen hundred and eighty-five, Title, 'Civil Rights.'" (*Ib.* Specification 11th.)

f. "Suits to recover possession of any office, except that of elector of President or Vice-President, representative or delegate in Congress, or member of a State Legislature, authorized by law to be brought, wherein it appears that the sole question touching the title to such office arises out of the denial of the right to vote to any citizen offering to vote on account of race, color, or previous condition of servitude: Provided, That such jurisdiction shall extend only so far as to determine the rights of the parties to such office by reason of the denial of the right guaranteed by the constitution of the United States, and secured by any

law, to enforce the right of citizens of the United States to vote in all the States." (*Ib.* Specification 13th.)

g. "Proceedings by the writ of *quo warranto*, prosecuted by any district attorney, for the removal from office of any person holding office, except as a member of Congress, or of a State Legislature, contrary to the provisions of the third section of the fourteenth article of amendment of the constitution of the United States." (*Ib.* Specification 14th.)

h. "Suits against consuls or vice consuls, except for offenses above the description aforesaid." (*Ib.* Specification 17th.)

And appeals and writs of error are granted to the Circuit Court of Appeals from the decrees or judgments of the Circuit Court in the following cases:

a. "Suits in equity, where the matter in dispute, exclusive of costs, exceed the sum or value of five hundred dollars, and the United States are petitioners." (Revised Statutes of the United States, section 629, Specification 2d.)

b. "Suits at common law, where the United States, or any officer thereof suing under the authority of any act of Congress, are plaintiffs." (*Ib.* Specification 3d.)

c. "Suits and proceedings for the enforcement of any penalties provided by laws regulating the carriage of passengers in merchant vessels." (*Ib.* Specification 5th.)

d. "Suits brought by any person to recover damages for any injury to his person or property on account of any act done by him, under any law of the

United States for the protection or collection of any of the revenues thereof, or to enforce the right of citizens of the United States to vote in the several States." (*Ib.* Specification 12th.)

c. "Suits to recover pecuniary forfeitures under any act to enforce the right of citizens of the United States to vote in the several States." (*Ib.* Specification 15th.)

f. "Suits authorized by law to be brought by any person to redress the deprivation under color of any law, statute, ordinance, regulation, custom, or usage of any state, of any right, privilege, or immunity, secured by the Constitution of the United States, or of any right secured by any law providing for equal rights of citizens of the United States, or of all persons within the jurisdiction of the United States." (*Ib.* Specification 16th.)

g. "Suits authorized by law to be brought against any person who, having knowledge that any of the wrongs mentioned in section 1980, are about to be done, and, having power to prevent or aid in preventing the same, neglects or refuses so to do, to recover damages for any such wrongful act." (*Ib.* Specification 18th.)

h. "Suits and proceedings arising under section 5344, Title, 'Crimes,' for the punishment of officers and owners of vessels, through whose negligence or misconduct the life of any person is destroyed." (*Ib.* Specification 19th.)

i. "Suits to prevent and restrain violations of the act to protect trade and commerce." (Supplement of the Rev. State., Vol. 1, 2d ed., page 763, section 4.)

j. "Suits by persons injured by violations of the act." (*Ib.* Section 7.)

k. "Suits by persons injured for the violation by a common carrier of the Interstate Commerce law." (*Ib.* p. 530, section 8.)

l. "Suits by the Interstate Commerce Commission against common carriers refusing to obey any lawful order of the commission." (*Ib.* p. 688, section 16.)

m. "Suits * * * in which controversy the United States are plaintiffs or petitioners." (Judiciary Act of August 13, 1888, *Ib.* 611.)

n. "Between citizens of the same state claiming lands under grants of different states." (*Ib.*)

In each and every of the foregoing cases a right of appeal or writ of error to the Supreme Court of the United States is denied under section 5, of the Evarts act, unless a constitutional question should arise in the course of the litigation; and under section 6 a right of appeal is given in the first instance to the Circuit Court of Appeals, and the decision of the Circuit Court of Appeals in such cases is not made final, and the language of the first sentence in the last paragraph of section 6 is, by its express terms, applicable to each of these cases and cannot, without doing violence to the language used, apply to cases other than these or similar cases. We submit, therefore, that this sentence is intended to provide and does provide for a right of appeal to the Supreme Court from the final decree or judgment of the Circuit Court of Appeals in all cases of which the Circuit Court of Appeals has

appellate jurisdiction, unless by the language in the first paragraph of section 6 the decision of the Circuit Court of Appeals is made final.

If we are correct in this position the contention here is at an end. The language of the last sentence in the last paragraph of section 6 applies in terms to the appeal authorized by the first sentence in the last paragraph:

"But no *such* appeal shall be taken;" etc.

"Such appeal" means the appeal taken under the first sentence of the last paragraph. That is the appeal in all cases where there has been a decree in the Circuit Court of Appeals in the cases where its judgment is not made final.

Mr. Desty, in his 8th Ed. of Federal Procedure, Vol. 2, page 879, section 541, gives section 1008 of the Revised Statutes, giving the time for the taking of an appeal from the decree of the Circuit Court as two years, as being still in force; and Mr. Foster, in section 483, page 1036, Vol. 2, of his Federal Practice, says, with respect to the language under consideration:

"It seems that this limitation applies only to writs of error to and appeals from the decisions of the Circuit Court of Appeals."

and at page 1037 he says:

"No judgment, decree or order of a Circuit or District Court, or a State Court in any action at law or in equity, can be reviewed by the Supreme Court, unless the writ of error is brought or the appeal taken within two years after the entry of such judgment, decree, or order."

Section 1008 provides that an appeal may be taken from the judgment, decree or order of a Circuit or District Court within two years. Section 1003 provides that:

“Writs of error from the Supreme Court to a State Court in cases authorized by law shall be issued in the same manner and under the same regulations, and shall have the same effect as if the judgment or decree complained of had been rendered or passed in a court of the United States.”

There is no provision other than that contained in section 1008 as to the time within which a writ of error may be taken to a state court from the Supreme Court; and under this section it is clear, we think, that a writ of error may be taken within two years, that is, section 1003 and 1008 should be construed together.

The last paragraph of section 5, in the act of March 3, 1891, provides:

“Nothing in this act shall affect the jurisdiction of the Supreme Court in cases appealed from the highest court of a state, nor the construction of the statute providing for review of such cases.”

If, therefore, prior to the passage of the act of March 3, 1891, a writ of error could be issued from the Supreme Court of the United States to the court of a State to review its decision within two years this right is still preserved intact by the act of March 3, 1891, and if the contention of the appellees is correct, we should have the anomalous condition that where constitutional questions arise in the Supreme Court of a

State, the party desiring to appeal might do so within two years; but if they arise within the circuit or district courts the appeal must be taken within one year. We insist that no such construction should be placed upon the act of 1891, unless the language is so clear that such construction could not be avoided. Construed, as we insist it should be construed, the act as a whole is harmonious, consistent and sensible, namely: under section 11, appeals from circuit or district courts to the Circuit Court of Appeals must be taken within six months; under section 6, appeals from the Circuit Court of Appeals to the Supreme Court must be taken within a year; and under section 1003 and 1008 of the Revised Statutes, appeals or writs of error to Circuit or District Courts of the United States or the courts of a State from the Supreme Court of the United States must be taken within two years.

The appellants in this case represent and collect taxes not only for the county of which they are officers, but also for the State. Except in the few instances of license fees the State of Indiana is dependent for its revenue upon the ad valorem taxes levied and collected by local officers under general laws, and accounted for and paid over at stated periods to the State officials. The State claims that its system of taxation with respect to the contention made in this case is in harmony and in accordance with the requirements of the constitution of the United States. This contention has been decided adversely to it by one of the District Judges of the United States Court. It asked relief from that decision at the hands of the

Circuit Court of Appeals, and the door was very promptly shut in its face. It now comes to this court, where the question can be directly presented and conclusively determined, and is met at the threshold with the objection that its appeal is not timely.

We submit that it is within the express letter and spirit of the statute and that the doors of this court should not be closed to us, and that, therefore, the motion to dismiss should be denied.

Respectfully submitted.

WILLIAM A. KETCHAM,

Attorney-General of Indiana.

ALFRED R. HOVEY,

Of Counsel for Appellants.

No. 30.

By. of Taylor, Richard & Moore
U. S. Supreme Court U. S.
FILED
Oct 5 1899

for

JAMES H. McKENNEY,
Clerk.

In the Supreme Court of the United States.

OCTOBER TERM, 1899.

Filed Oct. 5, 1899.

STERLING R. HOLT, JOEL A. BAKER,
THOMAS TAGGART, GEORGE WOLF,
WILLIAM A. BELL, AND CHARLES
H. STUCKMEYER, Appellants,

v.

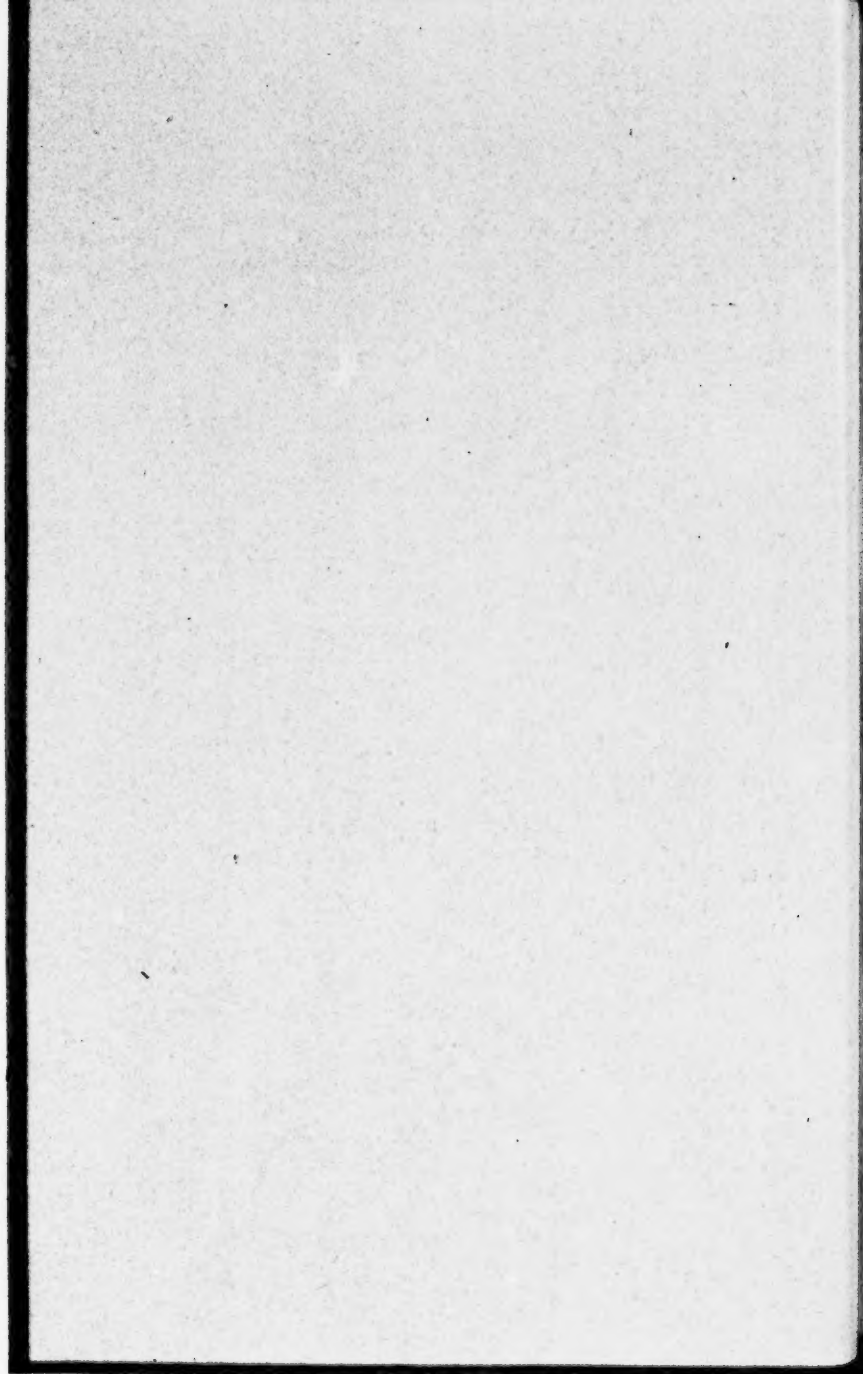
THE INDIANA MANUFACTURING
COMPANY.

Term No. 30.

BRIEF FOR THE APPELLANTS.

WILLIAM L. TAYLOR,
Attorney-General of Indiana.

JOHN K. RICHARDS,
MERRILL MOORES,
CASSIUS C. HADLEY,
Of Counsel.



In the Supreme Court of the United States.

OCTOBER TERM, 1895.

STERLING R. HOLT, JOEL A.
BAKER, THOMAS TAGGART,
GEORGE WOLF, WILLIAM
A. BELL AND CHARLES H.
STUCKMEYER, *Appellants*,

No. 30.

v.
THE INDIANA MANUFACTURING
COMPANY.

APPELLANT'S BRIEF.

STATEMENT.

This suit was brought in the Circuit Court of the United States for the District of Indiana, on July 13, 1894, to enjoin the appellants from collecting from the appellee certain taxes for the years 1892, 1893 and 1894, assessed against it, and entered upon the duplicates in the treasurer's office of Marion county, Indiana. Afterwards, on August 10, 1895, a supplemental bill praying for injunction, was filed by appellee against appellants, to restrain them from collecting certain taxes for 1895, then likewise assessed and entered against appellee.

The appellee is a manufacturing company, organized pursuant to the laws of the state of Indiana, and doing business in the city of Indianapolis.

The appellant Sterling R. Holt, was treasurer, Joel A. Baker, assessor, and Thomas Taggart, auditor of the county of Marion, state of Indiana; George Wolfe was assessor of Center township, Marion county, Indiana; and said officers, together with the appellants, William A. Bell and Charles H. Stuckmeyer, constituted the board of review of Marion county, Indiana, and all were citizens of Indiana, resident in Indianapolis.

The injunction was prayed on the ground that the levy and assessment was void and in contravention of the constitution and laws of the United States, in that it was an attempt to levy a tax upon certain patent rights held by the company.

THE PROCEEDINGS.

After being put at issue, the case was submitted to the circuit court upon the supplemental bill, answers thereto, and the stipulations and evidence set forth in the record.

Judge Baker sustained the bill and granted a perpetual injunction, restraining the appellants from collecting the taxes then entered upon the tax duplicates in the custody of the defendants.

(Record, pp. 16 and 17.)

An appeal was taken to the circuit court of appeals (Judges Woods, Jenkins and Showalter). That court refused to entertain jurisdiction, and held that the proper remedy was by appeal to this court.

(Holt v. Indiana Mfg. Co., 80 Fed. Rep., p. 1.)

Thereupon an appeal was prayed to this court.

After the appeal had been perfected, the appellee filed its motion to dismiss this appeal for want of jurisdiction of the case. This motion was overruled.

THE PLEADINGS.

The Petition. (Rec., pp. 2-9.)

The petition charges:

(a) That at the time for assessing the taxes for 1892, the complainant owned tangible property and assets to the amount of \$5,000, and that it made due return thereof for taxation; that its treasurer, Joseph K. Sharpe, Jr., appeared before the board of review of Marion county, Indiana, composed of said appellants, and such treasurer's evidence before such board corresponded with the return made by appellee.

(b) That such evidence showed complainant was possessed of certain patents then estimated to be worth \$15,000; that the then board of review, composed of said Taggart, Baker and Victor M. Backus, did "inequitably, wrongfully, unlawfully and in-

juriously fix the assessment" of appellee's property, because of appellee's ownership of said letters patent, at \$20,000, or \$15,000 more than appellee was justly assessable for, in violation of the constitution and laws of the United States, by virtue of which the said letters patent were held by appellee.

(c) Appellee paid as taxes for the said year 1892, \$95 to said Holt, as treasurer, which appellee alleges were in full of all taxes that were justly chargeable for that year upon its property, except as to the said letters patent. Notwithstanding this, the said treasurer is demanding \$284.94 as unpaid taxes for the year 1892, and that such demand is upon the assessment of said letters patent; and he is threatening to seize the property of appellee to pay the same.

(d) That in 1893 appellee was possessed of \$8,900 of taxable property, which it returned; that the said assessor demanded that the number and value of the letters patent owned by appellee should be placed on the assessment list, which was done, for the purpose of furnishing the assessor the information he desired; and, thereupon, the assessment list was made to show that appellee was possessed of four letters patent of the United States, of the value of \$25,000; that the board of review, composed of said Baker, Taggart and Backus, wrongfully assessed appellee's property for 1893, because of its ownership of said letters patent, at the sum of \$36,000, or \$27,100 more than appellee was properly assessable for; that appellee paid \$204.55 taxes, which were in full of all that

were chargeable to it for the year 1893, and in full of all its property, excepting said letters patent; that said Holt, as treasurer, demands a further sum of \$496.94 as unpaid taxes for said year 1893, basing said demand upon a valuation of said letters patent; and is threatening to seize appellee's property to pay the same.

(e) That for the year 1894 appellee was possessed of \$7,645 of tangible property, which it returned for taxation; that pursuant to demand of the assessor, appellee furnished its assessment list, and said assessment list was made to show that appellee was possessed of said four letters patent of the value of \$25,000. By the furnishing of such list, however, appellee alleges that it did not thereby agree to the legality of assessing letters patent for taxation; that appellee, by its attorneys, and officers, appeared before the board of review of Marion county, and protested against any assessment for taxation, except upon its actual tangible property; that the board of review "inequitably, wrongfully and injuriously" fixed the assessment of appellee's property, because of its ownership of said letters patent, at the sum of \$36,000, or \$28,355 more than it possessed in tangible property.

(f) That appellee had paid all the taxes it claimed to be justly due for the years 1892 and 1893, and that the taxes for the year 1894 were not then due; that at the time of paying the taxes for the years 1892 and 1893, appellee protested against the said assessments and made the payments as for the full amount prop-

erly chargeable, and that on July 11, 1894, at a meeting of the said board of review, appellee filed a motion to abate the "unlawful, inequitable, unjust and wrongful taxes" which had been assessed against it; which motion was denied.

(g) That appellee obtained a copy of the statement of taxes for 1892; also proceedings of the board of review for that year; also copy of tax statement for 1893, and copy of assessment list for 1893, as well as of the proceedings of the board of review for that year; also copy of tax statement for 1894, and assessment list for 1894, as well as of the board of review for that year; which copies were produced.

(h) "That the defendant, Sterling R. Holt, is the treasurer of Marion county, Indiana, whose duty as such treasurer, under the laws of the state of Indiana, it is, to receive and collect taxes for the said state of Indiana, and also for Marion county, in said state, and also for the city of Indianapolis, within said county;" that a large portion of the taxes received by said treasurer are on account of the state of Indiana, a sovereign state, and, under the constitution and laws, no suit can be maintained against such state; that it is the duty of such treasurer to pay into the treasury of the said state of Indiana a large portion of the amount so received, and that such moneys will become mixed with the moneys of the state, and thus be beyond the reach of any process of this court, and irrecoverable, and that a great and irreparable injury will result, unless such collection is prevented.

(i) That a much larger sum than the amounts so paid for the years 1892 and 1893 have been pretended to be assessed upon the appellee's assets, by reason of the inclusion therein of letters patent of the United States, and that said taxes have been extended upon the tax duplicate of Marion county, Indiana; which duplicates are in the hands of said defendant, Holt, as such county treasurer; that said taxes are so extended as delinquent taxes against appellee's property "under the provisions of the statute of the state of Indiana," and that appellants are threatening to and will levy upon the property of appellee and sell same to satisfy such delinquent taxes if not enjoined from so doing. All to the great and irreparable injury of appellee.

(j) That the said Holt, as treasurer, was asserting the right to enforce the payment of all the taxes so extended upon the duplicates for the years 1892 and 1893, including said letters patent, as made by the said board of review, and would do so unless enjoined, and would collect said taxes by sale of appellee's property.

(k) That such taxes constitute a cloud upon the title to the property of appellee, and that a court of equity has power to remove same.

(l) That appellee is "engaged in the business of manufacturing, and that its tangible property consists almost wholly of machinery, tools and materials used in carrying on its said business of manufacturing, and which are necessary thereto;" that if its property

should be seized and sold for taxes, as aforesaid, its business will be destroyed and ruined, and great and irreparable damage will result.

(m) That "it is a suit to redress the deprivation, under color of the law of the state of Indiana, of a right secured by the constitution and laws of the United States, and, further, that it is a suit arising under the patent laws of the United States."

(n) Appellee prayed for a writ of injunction, perpetually enjoining and restraining appellants, individually and as officers, and as a board of review, from "collecting, or in any manner attempting to collect, the said amount claimed as taxes as aforesaid, and entered upon the tax duplicates in the custody of said defendants or either of them, or any other amount which may be claimed to be due on account of the value of the said, or any, patents owned by your orator," and praying for a temporary injunction restraining the defendants from seizing or selling any of the property of appellee; also praying it be decreed that the assessment and valuation for taxation of the letters patent of appellee "made directly or indirectly by said assessors and board of review, is inequitable, unjust, unlawful and wholly void."

The Demurrer. (Rec., p. 10.)

On September 7, 1894, the appellants filed their joint and several demurrer to said bill, and for cause of demurrer said that said bill did not state a case that

entitles appellee in a court of equity to any discovery from any of the defendants, or to any relief against them, or either of them, as to any matter stated in said bill. Which demurrer on March 12, 1895, was overruled.

The Answer. (Rec., pp. 11 and 12.)

On March 30, 1895, appellants filed their answer. This answer states—

First. Appellants admit that the board of review of Marion county, Indiana, in the course of its business, in the assessment of the various corporations of said county, did assess the property of appellee at the amounts named in the complainant's bill of complaint, to wit:

For the year 1892	\$20,000 00
For the year 1893	36,000 00
For the year 1894	36,000 00

Second. "That the plaintiff is a corporation doing a lucrative manufacturing business, which was well established and widely known, with a large amount of tangible property, and a valuable franchise exclusive of patent rights."

Third. "That the market value of the stock of plaintiff at the time for making the assessment for the year 1894 was \$360,000, as defendants are informed and believe, and that the value of said stock at the time for making the assessments for the years 1892

and 1893, was at least \$180,000, as defendants are informed and believe."

Fourth. That the said "board of review in making said assessments for the years 1892, 1893 and 1894, the patents, if any plaintiff had, were in no way or manner included or considered, and that said board, in making said assessments, considered only the legally taxable property of plaintiff, and no other."

Fifth. That defendants deny all manner of unlawful combination and confederacy, etc., and ask to be dismissed with their costs.

This answer was sworn to by each and all of the then defendants, they being all of the county board of review as then constituted, who made the original assessments for the years 1892, 1893 and 1894, of all domestic corporations in the county of Marion, including appellee.

Replication. (Rec., p. 12.)

On the 13th day of April, 1895, complainant filed its replication in the general form.

Supplemental Bill. (Rec., pp. 13-15.)

On August 10, 1895, complainant filed its supplemental bill to cover the taxes assessed for that year. The said bill charges—

(a) That since the filing of the original bill, the statutes of Indiana relating to the subject of county

boards of review have been amended so as to increase the number of members thereof; such new board consisting of the said Holt, Baker and Taggart, original defendants, and William A. Bell and Charles H. Stuckmeyer, as newly appointed members, and the petition asks that said Bell and Stuckmeyer be made parties defendant.

(p) That at the time of assessing the taxes for the year 1895, complainant was possessed of tangible property to the amount of \$10,137, and returned the same for taxation upon the regular blank statements for taxation furnished by the tax assessor; that the tax assessor demanded of complainant the number and value of the letters patent owned by it, which complainant refused to furnish, but, instead thereof, wrote on the assessment list the following: "We are advised that patent rights are not taxable and therefore decline to state any valuation for them;" that the assessor thereafter made and attached to said assessment list a statement saying: "No. 30, returned by deputy assessor in 1894. No. Patent rights and value, 4, \$25,000. John W. McDonald." That said McDonald was the chief deputy of the township assessor.

(q) That complainant denied the legality of any assessment for taxation based upon any letters patent owned by it; that pursuant to summons it appeared by its officers and attorney before the board of review of Marion county, on June 19, 1895, and showed that it was possessed of no other assessable property than appeared on its assessment list, and that whatever

value the stock of said company might possess, it possessed solely by reason of its ownership of letters patent of the United States, and that except for such ownership such stock would have no value whatever, and that said stock was all issued in payment of such letters patent; notwithstanding which the said board of review "inequitably, wrongfully, unlawfully and injuriously fixed the assessment of complainant's property, because of such ownership of letters patent," and because of the value of the stock derived and resulting from such ownership of letters patent at the sum of \$36,000, or \$25,863 more than was possessed by the complainant in tangible property. All in violation of the constitution and laws of the United States.

(r) That all the taxes justly due from complainant had been paid as appears by tax receipts, and that at the time of paying such taxes it solemnly and formally protested against the unjust, inequitable, unlawful and wrongful assessment complained of, and that such payment was in full amount of all taxes lawfully charged against it.

(s) Complainant asks for the relief prayed in the original bill, and such further relief as is made by this supplemental bill.

The supplemental bill was not verified.

Stipulation. (Rec., p. 15.)

It was stipulated that the complainant might file the aforesaid supplemental bill, and that the answer and replication heretofore filed should have the same force and effect as if filed subsequent to the date of the filing of said supplemental bill, and that no other answer or replication need be filed.

Stipulation No. 2. (Rec., p. 15.)

On December 2, 1895, it was stipulated that the defendant waive the taking of any testimony, and rest upon the pleadings and evidence introduced and filed. Defendants waive any objection to the copies of tax statements, assessment lists, and proceedings of the board of review, which might be based on the fact that they, or any of them, are not certified, or that they or any of them were introduced before the filing of the supplemental bill. Defendants, however, do not waive other objections made and entered of record. Complainant gives notice that it will produce and use at the hearing the statutes of the state of Indiana bearing upon the question of the taxation of patents or patent rights.

Decree. (Rec., pp. 16 and 17.)

The decree sustained the bill and found that the laws of Indiana, requiring the taxation of patent rights, are unconstitutional and void, and that the

taxes assessed against the capital stock of the complainant was an indirect assessment for taxation of patent rights held by the appellee, thereby creating a cloud upon the title of complainant's corporate property, and a perpetual injunction was issued, enjoining all of the defendants and all persons acting through or under them, from collecting or attempting to collect the amounts claimed as taxes, and entered upon the tax duplicates in the custody of the defendants. An appeal was prayed and taken to the United States court of appeals, as before stated in this brief; which refused to take jurisdiction thereof, for the reason that this was not a suit to prevent taxation arising under the patent laws of the United States. An appeal was thereafter prayed directly to this court.

Assignment of Errors. (Rec., p. 17.)

Appellants assigned six errors:

First. The bill did not state sufficient facts.

Second. The court erred in overruling the demurrer to the bill.

Third. The decree was erroneous in finding that the taxes assessed by appellants in their official capacity against appellee on account of the valuation of its capital stock was an indirect tax on the patent rights held by appellee.

Fourth. The decree was erroneous in finding that the assessment against appellee's corporate property was wrongful, inequitable, unlawful and void.

Fifth. The decree was erroneous in directing the removal of the assessments against appellee's property.

Sixth. The decree was erroneous in directing a perpetual injunction against appellants from collecting any of the taxes entered upon the duplicate against appellee.

ARGUMENT.

The six errors assigned may be summarized in three propositions:

First. The bill did not show that the appellee was entitled to relief in a court of equity.

Second. The evidence sustained the assessment made by appellants upon appellee's property, and, likewise sustained appellee's answer that the letters patent held by appellee were not taxed.

Third. The value of patent rights owned by a manufacturing company can not be deducted from the aggregate assessment made against the shares of capital stock of such company.

First. The bill did not show that the appellee was entitled to relief in a court of equity.

A court of equity will not grant relief by injunction where a plain and adequate remedy at law or statute exists.

Pittsburgh, etc., Ry. v. Board of Public Works, 172 U. S., p. 32.

This proposition is so thoroughly discussed in the above case, and the cases cited therein, that the citation of other authorities is unnecessary. On page 37 this court lays down the fundamental proposition above stated, as follows:

"The collection of taxes assessed under the authority of a state is not to be restrained by writ of injunction from a court of the United States, unless it clearly appears, not only that the tax is illegal, but that the owner of the property taxed has no adequate remedy by the ordinary processes of the law, and that there are special circumstances bringing the case under some recognized head of equity jurisdiction. *Dows v. Chicago*, 11 Wall. 108; *Hannewinkle v. Georgetown*, 15 Wall. 547; *State Railroad Tax Cases*, 92 U. S. 575; *Union Pacific Railway v. Cheyenne*, 113 U. S. 516; *Milwaukee v. Koeffler*, 116 U. S. 219; *Shelton v. Platt*, 139 U. S. 591."

The above case lays down three propositions: First, that the tax must be illegal; second, that the owner of the property has no adequate remedy by the ordinary processes of the law; and third, there must be special circumstances bringing the case under some recognized head of equity jurisdiction.

These three elements must concur before a federal court will enjoin a state officer from collecting assessments that are properly made pursuant to law.

It will be observed that there is no pretense that the assessment against appellee was not regularly made at

the proper time, by the lawfully constituted authorities, strictly pursuant to the laws of the state of Indiana.

This is essentially a case of excessive taxation. It is true plaintiff uses certain adjectives, such as "inequitable," "unjust," "unlawful," "wrongful" and "void;" but the essence of the bill is one of excessive assessment.

The reasons why a federal court of equity will not stay the hand of state officers in the collection of taxes, except where all of the three above conditions concur, are so well stated by this court, in the Dows case, 11 Wall. 108, in an opinion rendered by Justice Field, that we quote the passage from pages 109 and 110:

"Assuming the tax to be illegal and void, we do not think any ground is presented by the bill justifying the interposition of a court of equity to enjoin its collection. The illegality of the tax and the threatened sale of the shares for its payment constitute of themselves alone no ground for such interposition. There must be some special circumstances attending a threatened injury of this kind, distinguishing it from a common trespass, and bringing the case under some recognized head of equity jurisdiction before the preventive remedy of injunction can be invoked. It is upon taxation that the several states chiefly rely to obtain the means to carry on their respective governments, and it is of the utmost importance to all of them that the modes adopted to enforce the taxes levied should be interfered with as little as possible. Any delay in the proceed-

ings of the officers, upon whom the duty is devolved of collecting the taxes, may derange the operations of government, and thereby cause serious detriment to the public.

"No court of equity will, therefore, allow its injunction to issue to restrain their action, except where it may be necessary to protect the rights of the citizen whose property is taxed, and he has no adequate remedy by the ordinary processes of the law. It must appear that the enforcement of the tax would lead to a multiplicity of suits, or produce irreparable injury, or where the property is real estate, throw a cloud upon the title of the complainant, before the aid of a court of equity can be invoked."

The above case was one where shares of stock in a national bank had been assessed by the taxing officers of the city of Chicago.

Five years later, this court, in the State Railroad Tax cases, 92 U. S. 575, again reconsidered all of the cases upon this subject, to that date. The evils flowing from the ready issuance of injunctions by the federal courts, restraining state officers from collecting taxes, were pointed out in an opinion rendered by Justice Miller, on page 613:

"We propose to consider these questions for a moment, because the immense weight of taxation rendered necessary by the debts of the United States, of the several states, and of the counties, cities and towns, has resulted very naturally in a resort to every possible expedient to evade its force.

"It has been repeatedly decided that neither the mere illegality of the tax complained of, nor its injustice nor irregularity, of themselves, give the right to an injunction in a court of equity."

(Citing authorities.)

"The government of the United States has provided, both in the customs and in the internal revenue, a complete system of corrective justice in regard to all taxes imposed by the general government, which in both branches is founded upon the idea of appeals within the executive departments. If the party aggrieved does not obtain satisfaction in this mode, there are provisions for recovering the tax after it has been paid, by suit against the collecting officer. But there is no place in this system for an application to a court of justice until after the money is paid.

"That there might be no misunderstanding of the universality of this principle, it was expressly enacted, in 1867, that 'no suit for the purpose of restraining the assessment or collection of any tax shall be maintained in any court.' Rev. Stat. sect. 3224. And though this was intended to apply alone to taxes levied by the United States, it shows the sense of Congress of the evils to be feared if courts of justice could, in any case, interfere with the process of collecting the taxes on which the government depends for its continued existence. It is a wise policy. It is founded in the simple philosophy derived from the experience of ages, that the payment of taxes has to be enforced by summary and stringent means against a reluctant and often adverse sentiment; and to do this successfully, other instrumentalities and other modes of procedure are necessary than those which belong to courts of justice."

The above was a case of assessments against railway property, wherein it was charged that the taxes assessed were excessive, illegal and void.

Judge Cooley, in his work on taxation, page 772, entirely supports the above views in these words:

"When a tax as assessed is only a personal charge against the party taxed, or against his personal property, it is difficult in most cases to suggest any ground of equitable jurisdiction. Presumptively the remedy at law is adequate. If the tax is illegal and the party makes payment, he is entitled to recover back the amount. The case does not differ in this regard from any other case in which a party is compelled to pay an illegal demand; the illegality alone affords no ground for equitable interference, and the proceedings to enforce the tax by distress and sale can give none, as these only constitute an ordinary trespass. To this point the decisions are numerous. The exceptions to this rule, if any, must be of cases which are to be classed under the head of irreparable injury."

Thus the law has come to be that the presumptions are in favor of the adequacy of the law to furnish a complete remedy for illegal or void assessments. These presumptions must be overthrown by positive testimony. The allegation of irreparable injury is easy to make.

What is "irreparable injury?"

This question is answered by this court in the case of *Shelton v. Platt*, 139 U. S., p. 591. That was a

case where express company property in Tennessee, it was charged, was about to be seized by the sheriff for taxes, which would greatly embarrass the company in the conduct of its business, and subject it to a heavy loss and damage, and the public served by it, to a great loss and inconvenience.

On page 596, the court, after quoting the irreparable injury clause in the bill, declare, speaking through Chief Justice Fuller:

"The trespass involved in the levy of the distress warrants was not shown to be continuous, destructive, inflictive of injury incapable of being measured in money, or committed by irresponsible persons. So far as appeared, complete compensation for the resulting injury could have been had by recovery of damages in an action at law. There was no allegation of inability on the part of the express company to pay the amount of the taxes claimed, nor any averments showing that the seizure and sale of the particular property which might be levied on, would subject it to loss, damage and inconvenience which would be in their nature irremediable."

It might be said, with some reason, that the seizure of the property of express companies might interfere with their business and the public business. But in the case at bar there was no reason, either public or private, that would warrant the injunctive hand of the court being laid upon the local taxing officers. There was no pretense that the appellee did not have funds with which to pay the taxes; that the taxes were ir-

regularly assessed; or that there was fraud in the assessment.

This court, in the Shelton case, *supra*, in speaking of the legislation of congress prohibiting enjoining of federal taxes, on page 597, used this pertinent language:

"Legislation of this character has been called for by the embarrassments resulting from the improvident employment of the writ of injunction in arresting the collection of the public revenue; and, even in its absence, the strong arm of the Court of Chancery ought not to be interposed in that direction except where resort to that court is grounded upon the settled principles which govern its jurisdiction."

COMPLAINANT HAD AN ADEQUATE REMEDY AT LAW.

Complainant was not entitled to relief in a court of equity in this case, for the reason that there was a plain, adequate remedy at law. That remedy, complainant did not pursue.

What was the remedy pointed out by the statute of Indiana?

Section 1 of article X of the Indiana constitution reads as follows:

"The General Assembly shall provide, by law, for a uniform and equal rate of assessment and taxation; and shall prescribe such regulations as

shall secure a just valuation for taxation of all property, both real and personal, excepting such only, for municipal, educational, literary, scientific, religious, or charitable purposes, as may be specially exempted by law."

Section 48 of the tax law of 1891, being §8458, R. S. 1894, reads as follows:

"On the first day of April of each year, or as soon thereafter as practicable, and before the first day of June, the assessor shall call upon each person required by this act to be assessed, and furnish him or her with the proper blanks for the purpose, and thereupon such person shall make to such assessor a full and correct description of all the personal property, of which such person was the owner on the first day of April of the current year, and such person shall also, at the same time, make separate, full and true statements in like manner, in writing, distinctly setting forth in each a correct description of all the personal property held, possessed or controlled by him as executor, administrator, guardian, trustee, receiver, partner, agent, attorney, president or accounting officer of a corporation, consignee, pawnbroker, or in any representative or fiduciary capacity, and he shall fix what he deems the true cash value thereof to each item of property for the guidance of such assessor, who shall determine and settle the value of each item, after examination of such statement, and also an examination under oath of the party or of any other person, if he deems it necessary. In determining and settling such valuation, he shall be governed by what is the true cash value, such being the

market or selling price at the place where the property shall be at the time of its liability to assessment, and if there is no market value, then the actual value. In making the valuation, annuities and royalties shall be valued at their present cash value. For the purpose of making such statements, the person to be assessed shall receive the proper blanks from the assessor."

The above section provides for the listing of personal property generally throughout the state.

Section 53 of the Indiana tax law of 1891, being section 8463, R. S. 1894, contains a form of schedule for such property, copies of which are set out in the record. (See Rec., p. 37.)

All domestic corporations are assessed in Indiana pursuant to statutes specially governing same. All of the hundreds of domestic corporations in Indiana, including appellee, are assessed under the same statutes by similar boards.

Section 12 of the Indiana tax law, being §8422, R. S. 1894, governing the assessment of domestic corporation, reads as follows:

"All corporate property, including capital stock and franchises, except where some other provision is made by law, shall be assessed to the corporation as to a natural person in the name of the corporation. The place where its principal office in this state is situated shall be deemed its residence, but if there be no principal office in the state, then such property shall be listed and taxed at any place in the state where the corporation transacts business."

Section 25 of the tax law, being §8435, R. S. 1894, provides for the taxation of franchises, and is as follows:

"Every franchise granted by any law of this state, owned or used by any person or corporation, and every franchise or privilege used or enjoyed by any person or corporation, shall be listed and assessed as personal property."

Section 73 of the tax law of 1891, being §8491, R. S. 1894, provides how all domestic corporations are required to make return of their property for taxation. This applies to all domestic corporations in Indiana, and reads as follows:

"Every street railroad, water works, gas, manufacturing, mining, gravel road, plank road, savings bank, insurance and other associations incorporated under the laws of this state (other than railroad companies and those heretofore specifically designated) shall, by its president or other proper accounting officer, between the first day of April and the first day of June of the current year, in addition to the other property required by this act to be listed, make out and deliver to the assessor a sworn statement of the amount of its capital stock, setting forth particularly:

"First. The name and location of the company or association.

"Second. The amount of capital stock authorized, and the number of shares in which such capital stock is divided.

"Third. The amount of capital stock paid up.

"Fourth. The market value, or if no market value, then the actual value of the shares of stock.

"Fifth. The total amount of indebtedness, except the indebtedness for current expenses, excluding from such expenses the amount paid for the purchase or improvement of property.

"Sixth. The value of all tangible property.

"Seventh. The difference in value between all tangible property and the capital stock.

"Eighth. The name and value of each franchise or privilege owned or enjoyed by such corporation.

"Such schedule shall be made in conformity to such instructions and forms as may be prescribed by the auditor of state. In case of the failure or refusal to make report, such corporation shall forfeit and pay one hundred dollars for each additional day such report is delayed beyond the first day of June to be sued and recovered in any proper form of action in the name of the state of Indiana, on the relation of the prosecuting attorney, such penalty, when collected, to be paid into the county treasury. And such prosecuting attorney in every case of conviction shall be allowed a docket fee of ten dollars to be taxed as costs in such action."

It was upon this statute and pursuant to its form that the appellee made its return for the years 1892 (Rec., pp. 31-33), 1893 (Rec., pp. 34-36), 1894 (Rec., pp. 58-60), 1895 (Rec., pp. 51-53).

When these sworn statements of corporations are made, as is shown in this record, they are handed to the county auditor, and by him turned over to the

county board of review, composed of the officers shown heretofore in this brief. This board of review thereupon takes these lists and makes the original assessment against all domestic corporations in Indiana.

The law governing these assessments by the county board of review is set forth in section 74 of the tax law of 1891, being §8492, R. S. 1894, as follows:

"Such statement shall be scheduled by the assessor, and such schedule, with the statement so scheduled, shall be returned by the assessor to the county auditor. The auditor shall annually, on the meeting of the county board of review, lay before said board the schedule and statements herein required to be returned to him, and said board shall value and assess the capital stock and all franchises and privileges of such companies or associations in the manner provided in this act, and the said auditor shall compute and extend the taxes for all purposes on the respective amounts so assessed, the same as may be levied on other property in such towns, cities or other localities in which such companies or associations are located. In all cases where the capital stock of any such corporation exceeds in value that of the tangible property listed for taxation, then such capital stock shall be subject to taxation upon such excess of value; where no tangible property is returned or found, and the capital stock has a value, it shall be assessed for its true cash value. But where the capital stock, or any part thereof, is invested in tangible property, returned for taxation, such capital stock shall not be assessed to the extent that is so invested. Every franchise or privilege of any such corpora-

tion shall likewise be assessed at its true cash value. Where the full value of any franchise is represented by the capital stock listed for taxation then such franchise shall not itself be taxed; but in all cases where the franchise is of greater value than the capital stock, then the franchise shall be assessed at its full cash value, and the capital stock in such case shall not be assessed."

The court will observe that this board of review values all capital stock, all franchises and all privileges of domestic companies in Indiana.

The court will further observe that the above section clearly defines exactly how domestic corporations shall be assessed in Indiana. We will discuss this section further along in the brief when we take up the evidence.

Our purpose now is to simply show the method by which taxes are assessed and the remedies for illegal or void assessments.

Section 114 of the tax law of 1891, being §8532, R. S. 1894, provides for the organization, duties and powers of the county board of review. It met annually on the first Monday after the fourth day of July until amended by an act of 1895 which fixes the time at the third Monday in June. Two weeks' previous notice of its meeting is given by the county auditor.

After the county board of review has made such original assessment against a domestic corporation, if such corporation feels aggrieved, it is its duty to appeal to the state board of tax commissioners. This appeal is provided for by statute.

Section 125 of the tax law of 1891, being §8543, R. S. 1894, reads as follows:

"Appeals shall lie from the decision of any county board of review to the state board of tax commissioners, which shall hear and determine the same in such manner as it may by its rules prescribe, and certify its decision, which shall be final, to the proper county auditor: Provided, That all such appeals shall be allowed within such time and under such restrictions as may be prescribed by the state board of tax commissioners; but the pendency of such appeals shall not operate to stay the collection of any tax, except by special order of the board and upon such conditions as it may prescribe."

This section was amended in 1895, so that the amended section was in force when the assessment for 1895 was made against the appellee. The amended section reads as follows:

"Any person, partnership, company, association or corporation dissatisfied with the action of the county board of review, upon any original assessment or upon any application to increase or decrease the assessment made by any township or county assessor, or upon any order for the assessment of hidden or omitted property, shall have the right to appeal from the order or assessment of the county board of review to the state board of tax commissioners; and in like manner any township or county assessor, or any member of the county board of review, or any taxpayer or taxpayers of the county shall have the right to appeal to the state board of tax commissioners

from any original assessment, made by said county board of review, and from any order of the county board of review increasing or decreasing any assessment, or refusing to increase the same, or to assess hidden or omitted property, upon giving notice of such appeal within five days after the adjournment of the county board of review, to the county auditor of the county from which said appeal is to be taken. Upon receiving notice of such appeal, the auditor of such county shall forthwith make out a statement, in writing, showing concisely the substance of the complaint made, if any, and the action of the board thereon, and shall transmit the same by mail to the auditor of state, who shall lay the same, for its action, before the state board of tax commissioners when it shall convene: Provided, That such state board of tax commissioners may make such regulations in regard to the taking of appeals, not inconsistent herewith, as they may deem necessary to protect the rights of the parties questioning their assessments. Such state board of tax commissioners shall, upon appeal from an assessment by the party aggrieved, assess the property in controversy. The auditor of state shall certify to the auditors of the several counties all such changes made by said state board of tax commissioners, showing in the first column the assessment made by the county or township officials, and in the second column the assessment as made by the said state board of tax commissioners, which latter amounts shall be by said auditor extended on the tax duplicates in lieu of the amounts fixed by said township or county officials, or by said county board of review: Provided, further, That it shall not be

necessary for said auditor of state to issue separate notices of certificates with reference to each person affected, but he may include all persons affected in any one county in one or more notices and certificates: Provided, further, That the pendency of such appeals shall not operate to stay the collection of any tax, except by special order of the board, and upon such conditions as it may prescribe."

Acts of 1895, p. 79.

These above quoted sections of the Indiana tax law constitute a complete remedy by appeal. The appellee did not avail itself of that remedy. Instead of appealing from any of these assessments, it waited for more than a year after the taxes of 1892 were due before paying any part of the taxes for that year. It appeared before the county board of review in 1892, and its secretary testified affirming the truth of its statement. (See Rec., p. 34.) There was no protest or objection to the assessment filed or made by any of the officers of the company that year.

For 1893 no one appeared for the company to protest or object to the assessment so fixed by the county board of review at exactly the market value of the stock sworn to by the secretary. (See Rec., p. 42.)

For 1894 the company appeared before the county board of review and testified, and on page 3 of the printed stipulation as to omitted evidence covering the proceedings before the board of review of that year, this colloquy ensues between Mr. Holt, treasurer, and Mr. Bradford, the attorney for the appellee.

"Mr. Holt: 'The way to do is to appeal from this board.'

"Mr. Bradford: 'We have other appeals. I think, perhaps, this being a federal question, I will file a suit in the United States Court.' "

Here the appellee was notified of the appeal, but he promptly notified the board that his appeal would be to the federal court.

It is not only the privilege of any person feeling aggrieved at the assessment of a county board of review in Indiana to appeal to the state board of tax commissioners. The taxpayer can not sue for the recovery of money, nor can he enjoin the collection of taxes until he has pursued the statutory remedy provided for such cases.

This question is conclusively settled in the case of *Senour v. Matchett*, 140 Ind. 636. In this case the county board of review had added to the appellee's tax list, \$10,000 against "greenbacks" held by Matchett on the first day of April. "Greenbacks," at that time, 1892, were not taxable. Matchett did not appeal from the assessment by the county board of review to the state board of tax commissioners, as he should have done. Matchett averred that he had no notice that the board of review was attempting to increase his assessment, and he had no remedy at law; that the state board of tax commissioners had not made any rules or regulations governing appeals from the county board of review; and as a matter of fact, that he did not own any "greenbacks" on April first, 1892, the date of his assessment.

He thereupon attempted to enjoin the treasurer of Marshall county from collecting these taxes. The supreme court of Indiana, after quoting the law governing appeals, and although the assessment of "greenbacks" was utterly void, on page 639, say:

"Notwithstanding this fact, no steps were taken by him to prosecute an appeal to the state board of tax commissioners, but he abided his time until his taxes became due, and then refused to pay those accruing upon the amount added to his list by the board of review, and commenced this action for injunctive relief."

Further along, on the subject of collateral attack against the assessment made by the county board of review, on page 639, the court say:

"While it is true that the board had no right, under the law then existing, to add legal tender notes held in a bone fide manner by appellee, still it was within its province to determine whether he had temporarily converted his taxable money into these notes for the express purpose of evading the payment of taxes thereon; and if it made a mistake, or reached a wrong conclusion, it can not be held, upon a collateral attack, that its action or decision therein was void, and if he was guilty of such a conversion, a court of equity will not interfere. *Ogden, Treas., v. Walker*, 59 Ind. 460.

"In this tribunal, which possess quasi judicial powers, is lodged, by law, exclusive original jurisdiction over the subject-matter of revising and correcting tax assessments. And when it once obtains jurisdiction over the person by virtue of

notice provided by the statute, or upon appearance of the taxpayer, whose list is called in question, its action or decision in the matter, right or wrong, is binding upon him until set aside or vacated by an appeal or some other direct authorized proceeding. See *Jones, Treas., etc., v. Cullen*, 40 N. E. Rep. 124, and cases therein cited; *Jones, Treas., v. Rushville Natural Gas Co.*, 135 Ind. 595.

Then taking up the direct question here presented, namely, the right to enjoin the treasurer from collecting taxes on erroneous assessments, the court say, on page 640:

"The legislature having created a board of review in each county, and likewise a state board of tax commissioners, and clothed each with certain appropriate powers and duties, and provided for an appeal from the former to the latter, a person aggrieved by reason of the errors or irregularities that may enter into the decisions or orders of the board of review, and which may render the same voidable, but not void, must invoke the remedy provided by appeal, and will not be permitted to assail the same in a court of equity. In this there is no hardship, for it must be presumed that the appellate tribunal, as is enjoined upon it by law, will give the appealing party a fair hearing and administer equal justice to all; neither permitting property liable to taxation to escape the burden thereof, nor impose upon the citizen an obligation to pay a tax upon property or means that he does not own, or which, if he does, are exempt from taxation by virtue of law.

"The contention of appellee that he could not

appeal for the reason that the state board of tax commissioners had not made and provided the necessary rules and regulations relative to appeals to that body, is without merit. The law granted him an appeal as a matter of right; he failed to exercise it in any way, and the neglect of the state board to provide regulations and furnish blanks is not an available excuse for his failure to demand an appeal."

This case, it seems to us, is conclusive against the right of appellee to injunctive relief.

"Construction by the state courts of last resort of state constitutions and statutes will ordinarily be accepted by this court as controlling."

Adams Express Co. v. Ohio, 165 U. S., p. 219.

The proposition laid down in the *Matchett* case, *supra*, in principle is entirely supported by this court in the *Pittsburgh Railway* case, 172 U. S. There the appellant, as here, failed to appeal from the decision of the board of public works to the circuit court; but, instead thereof, hastened to the federal court and prayed for an injunction. The court below justly denied the right, and this court affirmed the decision, using this language on page 48:

"The plaintiff, upon its own showing, having made no attempt to avail itself of the adequate remedies provided by the statute of the state for the review of the assessment complained of, is not entitled to maintain this bill."

The same doctrine is supported by the following cases:

Small, Receiver, v. City of Lawrenceburgh,
128 Ind., p. 231.

On page 234 this language appears:

"The assessor was charged with the duty of fixing the value on the property (sections 3071 and 3072, R. S. 1881). And if the parties were aggrieved on account of being assessed with a greater amount than should have been charged against them, they had a remedy by appearing before the city board of equalization."

Clement v. People, 177 Ill. 144.

The law of appeals from assessments in Illinois is similar to that of Indiana. The supreme court of Illinois, on page 144, say:

"The charge of injustice and lack of uniformity with other assessments in the county need not be further noticed than to say section 86 of the revenue law affords a party so aggrieved the only remedy for the correction of an unjust or excessive valuation of his property for the purposes of taxation, unless it is shown to have been fraudulently made. We have repeatedly held that the courts have no power to revise an assessment merely because of a difference of opinion as to the reasonableness of the valuation placed upon the property."

Kinley Manufacturing Company v. Kochersperger, 174 Ill. 379.

Discussing this duty of appeal to the court from the decision of the court board, the supreme court of Illinois, refusing the injunction because the company had not pursued the remedy provided by statute, say, on page 381:

"It is the duty of the county board to determine every case brought before it. * * * It is a familiar rule that where there is a complete remedy at law, equity will not interfere."

It was the duty, then, of appellee to have appealed to the state board of tax commissioners from the action of the county board of review.

All officers are presumed to do their duty. The state board of tax commissioners, it must be presumed, would have done its duty under the law and under the oaths of its members. If there had been an excessive assessment, the state board of tax commissioners would have reduced it. If there had been an illegal assessment, it must be presumed that the state board of tax commissioners would have corrected such errors.

The state board of tax commissioners is composed of the governor, who is chairman, the secretary of state, the auditor of state, and two persons, appointed by the governor, of different political parties. The two appointees are called commissioners. These five constitute the board. They convene on the second Monday of July of each year at Indianapolis, and assess railroad property, rolling stock, telegraph, palace car, dining car, etc., companies, and hear appeals from county boards of review. The evidence is all heard and the hearing is entirely *de novo*.

The appellee, not having appealed, the presumption is that the assessment made by the county board of review is correct. This presumption runs all the way through this case.

Senour, *Treas., v. Matchett*, *supra*.

In *Jones, Treasurer, v. Gas Company*, 135 Ind. 595, in reversing the trial court because it granted an injunction against the treasurer restraining him from collecting the taxes fixed by the county board of review on the gas company, the supreme court of Indiana, on page 598, use this language.

"The board of equalization not only has the power to assess the capital stock of a corporation where the value of such stock exceeds the value of the tangible property but it is its duty to do so. The board in such cases has exclusive original jurisdiction, and, while its action is not strictly judicial, it is at least quasi judicial and binds every one within its jurisdiction."

The court then proceeds to a discussion of the assessment of capital stock above the value of the tangible property, as returned by the company; and as that point was pressed by the appellee here, we quote the further language of the Indiana supreme court, from page 598, *supra*:

"It is true that such board can not legally assess capital stock where the capital is invested in tangible property listed for taxation, unless such stock exceeds in value the property in which it is invested, but who shall determine the question

as to whether the stock is of greater value than the tangible property?

"The board of equalization, we think, must decide that question. If it makes a mistake and reaches a wrong conclusion, can it be said that its assessment is void? We think not. We think it is binding on the corporation assessed, until set aside or vacated by appeal, or some other authorized direct proceeding. It has a'ways been the policy of the state to make the assessment and collection of taxes summary, and to hold now that a mere mistake or error of judgment in the officers charged with the duty of assessing and collecting taxes renders the tax void and subjects the officers to injunction proceedings, is to reverse this long settled policy."

Having thus, we trust, shown that the sole remedy of appellee was by appeal, let us proceed to the next step.

Having appealed, the presumption is that the state board of tax commissioners would have done their duty and corrected the errors and remitted all void assessments, if any there were. This is a presumption of law that necessarily arises.

REFUNDING OF TAXES.

If the state board should affirm the assessment made by the county board, what is the taxpayer's next remedy in Indiana?

The appellee should have paid the taxes assessed, and then filed a petition with the board of county com-

missioners for recovery of the amount illegally assessed. The taxes here enjoined are the state, county and city taxes.

(a) *State and County Taxes.*

The statute of Indiana provides for the refunding of these taxes—all of them. Section 1 of the tax law of 1853, being §7915, R. S. 1894, covers the refunding of all county taxes wrongfully assessed and collected, and makes it the duty of the board of county commissioners to repay same.

Section 2 of said act, being §7916, R. S. 1894, provides for the refunding of taxes paid into the state treasury, and provides that the auditor of state shall audit, and the treasurer of state shall pay same out of the state treasury. Said sections reads as follows:

"Section 1. In all cases where any person or persons or body politic or corporate shall appear before the board of commisisoners of any county in this state, and establish, by proper proof, that such person or body politic or corporate has paid any amount of taxes which were wrongfully assessed against such person or body politic or corporate in such county, it shall be the duty of said board to order the amount, so proved to have been paid, to be refunded to said payer from the county treasury, so far as the same was assessed and paid for county taxes.

"Sec. 2. In all cases where a portion of the amount so wrongfully assessed and paid shall have been for state purposes, and shall have been

paid into the state treasury, it shall be the duty of the said board of commissioners to certify to the auditor of state the amount so proven to have been wrongfully paid, under the seal of said board of commissioners; and the auditor of state shall, thereupon, audit the same as a claim against the treasury, and the treasurer of state shall pay the same out of any moneys not otherwise appropriated."

If the county treasurer has already paid into the state treasury the proportion of money due the state, then the act of March 9, 1889, being §§1419-1425, R. S. 1894, affords an adequate remedy to the taxpayer.

So much of the first section of this statute as is in point reads as follows:

"Any person or persons having or claiming to have a money demand against the state of Indiana, arising at law or in equity, express or implied, accruing within fifteen years from the time of the commencement of the action, may bring suit against the state therefor, in the superior court of Marion county, Indiana, by filing a complaint with the clerk of the said court, and procuring a summons to be issued by said clerk, which summons shall be served upon the attorney-general of Indiana, thirty days before the return day of the summons."

(b) *Refunding City Taxes.*

The latter part of section 59 of the act of March 7, 1873, being §3618, R. S. 1894, provides for the refunding of taxes erroneously assessed and collected

by cities. So much of said section as is applicable to this case reads as follows:

"The common council shall then proceed to fix the amount and rate of tax to be levied on property and polls within such city, and the clerk shall have power, at any time, to correct erroneous assessments that shall be proven and made apparent to him, and the common council may, at any time, order the amount erroneously assessed against and collected from any taxpayer to be refunded to him."

The complaint correctly states that Holt, treasurer of Marion county, is by the statute also the treasurer for the city of Indianapolis; that he collects all the taxes due the state from the county of Marion; thus, he is the treasurer for the state of Indiana, the county of Marion and the city of Indianapolis in collecting all taxes and distributing them. He is thus the trustee and agent of all three governments in the collection of taxes.

We have shown above that there is an ample statutory remedy for collecting taxes already paid over to the state, county and city.

The methods above set forth for the collection of taxes, either illegally or fraudulently assessed, are methods that are provided for by statute, as construed by the supreme and appellate courts of Indiana. In other words, they are statutory remedies.

But independent of all statutes and their construction, the common law affords ample remedy for the collection of taxes illegally or fraudulently assessed.

This question has been fully passed upon by the appellate court of Indiana.

Simonson v. Town, 5 Ind. App., p. 466;
Dillon on Municipal Corp. 940.

There is no city treasurer for the city of Indianapolis. All of the money for the city of Indianapolis always remains in the hands of the county treasurer until it is expended. The office of city treasurer for the city of Indianapolis was long ago abolished, so that the county treasurer retains all of the money in his hands belonging both to the county of Marion and the city of Indianapolis until it is expended.

There is, however, a much shorter and more direct method than to wait until the money has been paid over by the county treasurer to the state, and that is the one appellee should have adopted, provided it had appealed and the state board of tax commissioners had not corrected its assessment. It is bound to use diligence and adopt the shortest and most convenient method of having refunded to it the taxes alleged to be illegally collected. This remedy is to file a petition before the board of county commissioners for the refunding of all illegal or void taxes paid to the county treasurer for the county and the state and city governments. This was a duty, and if appellee neglected it, it was guilty of laches, and can not now complain. This question is fully decided by the appellate court of Indiana in the case of Dubois v. Board of Commissioners of Lake county, 10 Ind. App. 347.

In that case Dubois claimed to have paid a considerable sum on account of taxes erroneously assessed and collected. Part of it was due the state, part the county and part the town of Crown Point. He filed a claim before the board of county commissioners, and, upon its being refused, he immediately brought a suit in the circuit court of the county. It was the duty of the board of county commissioners to refund the money, and the court so held. This is the settled law in Indiana. But before the trial court had passed upon the question the county treasurer had paid the money over to the state and town treasurers. The appellate court held that this did not affect the taxpayer's right of recovery; that the county treasurer had notice of the claim and should have retained the money.

On page 350 the court, passing upon the question, say:

"When the county, notwithstanding the legal proceedings instituted to recover such money, nevertheless distributed the same to the state and town authorities, it did so at its own risk and peril, and the appellant can not be required to pursue such funds into the hands of the parties to whom they were wrongfully distributed."

Further along on page 350 the court holds that the county treasurer was a trustee for the taxpayer; that the moneys paid in became county taxes until distributed.

The language of the court in that case so fully covers the point presented in this case that we quote it:

"The assessment and collection of taxes, as found by the court, had been made in solido, and not in parcels. When it was paid into the county treasury it became county taxes for all purposes until it had been distributed to the various funds. As long as it remained in the county treasury it was held in trust by the county, either for the appellant or for the proper funds to which it respectively belonged. When the board of commissioners received notice of the appellant's claim, the county became a trustee for the appellant, and in the event it was afterward adjudged that his claim was a meritorious one, it became obligatory upon the county to refund the money to appellant, which had been erroneously paid by him. The town of Crown Point collected no taxes from the appellant. It was the county or its representatives who did this, and the county alone must respond as long as the funds are in its treasury. When this action was instituted, the money was all in the possession of the appellee, and it is impossible for us to conceive how the appellee could be held to profit by its own wrong in subsequently paying out or distributing the money or any part thereof to the state or town. The pendency of a suit is always sufficient notice of the matter involved in such suit, at least to the parties to the litigation, and those who claim under them. *Arnold v. Smith*, 80 Ind. 417. If this be true, there was certainly no necessity for suing out an injunction in order to hold the appellee accountable.

"It is true that the statute provides that when a portion of the taxes wrongfully assessed and paid shall have been paid for state purposes the commissioners shall give the claimant a

certificate to the auditor of state for the repayment of the same by the treasurer of state. But this provision is expressly limited to cases where the money had already been paid into the state treasury at the time the action was commenced. R. S. 1894, section 7916 (R. S. 1881, section 5814). The section cited has no application when the money is still in the county treasury at the time of the action to recover the same."

Various provisions of the statutes of Indiana not necessary to quote make up the following data, which is of importance in this case:

The county board of review meets on the third Monday in June annually;

The state board of tax commissioners meets on the second Monday of July annually;

The levies are fixed and the tax duplicate made up and turned over by the county auditor to the county treasurer for collection on January 1st of each year, following said assessments;

Taxes immediately thereafter become due. They, however, do not become delinquent, if the first installment is paid by the first Monday in May following; and the second installment is not due until the first Monday of November following;

The taxpayer has all of this period in which to pay his taxes.

The appellee could have paid his taxes any time between January 1st and May 1st, and filed a claim before the board of county commissioners for refunder of his taxes, and from their action an appeal is given

to the circuit court. It is not only an adequate remedy, but is a short, speedy, simple, summary and cheap remedy.

R. S. 1894 §7917;

Shultz v. Board, 20 Ind. 178;

State v. Board, 63 Ind. 497.

SUMMARY.

To sum up the above propositions:

First. The appellee had a complete and adequate remedy at law by appeal to the state board of tax commissioners from the assessment made by the county board of review.

Second. It failed and refused to pursue this remedy, which was open to it, and which it was its duty to pursue; and having failed so to do, it lost its right in the state or federal courts to assail the assessment made by the county board; and for that reason alone the court below erred in overruling the demurrer to the bill and holding the bill good.

Third. The presumption is that the state board of tax commissioners would have remedied any evil and corrected any erroneous assessment, if such there was.

Fourth. If the state board refused to make such correction, the taxpayer could wait until after the first day of January following, when he could have paid

the taxes to the county treasurer and immediately filed claim with the board of county commissioners for the refunding of the illegal taxes assessed for all purposes.

Fifth. This remedy was not only adequate, complete and perfect, but was a much more speedy and simple remedy than to proceed as appellee has done in this case. The record shows that more than five years have elapsed since the bill was filed in this case, and it is probable that more expense has been incurred by way of costs and fees than the total amount of taxes involved.

Sixth. No "irreparable injury" could possibly have resulted, and appellee, if it had pursued the remedy that the statute distinctly points out, as the assessment by the county board and the state board would have been made months before any taxes would be due from appellee; and, further, after such taxes were due it had four months in which to pay same and prepare its petition for refund for each of the years complained of.

Seventh. No "multiplicity of suits" was stayed by this injunction. On the contrary, one simple petition filed with the board of county commissioners would have covered the entire taxes charged to have been illegally assessed and collected, and, if refused, appellee could have filed its complaint in the circuit or superior court of Marion county.

Eighth. The alleged illegal taxes could in no event cast a "cloud" upon the title to appellee's real estate,

because appellee owned no real estate, and no taxes, of course, thereon are involved in this controversy.

Ninth. Appellee having failed either to appeal or to pay its taxes and file a petition for refunder, as the statute of Indiana provides, the bill was bad, and the circuit court of the United States should have sustained the demurrer and dismissed the bill.

**Second. The evidence sustained the assessment by appellants upon appellee's property, and sustained appellants' answer that the let-
ters patent held by appellee were not taxed.**

We have quoted above in this brief the statute governing assessments of domestic corporations in Indiana. The appellee was a domestic corporation, organized in February, 1891, pursuant to the laws of Indiana, for manufacturing purposes, with a capital stock of \$200,000. The capital stock was increased in February, 1893, to \$360,000.

Section 8 of the act of March 6, 1853, being §5060, R. S. 1894, respecting the organization of manufacturing companies, under which law appellee was incorporated, reads as follows:

"The capital stock, as fixed by such company, shall be paid into the treasury thereof, within eighteen months from the incorporation of the same, in such installments as the by-laws of the company assess and direct."

The supreme court of Indiana have construed this section to mean something.

In the recent case of *Clow v. Brown*, 150 Ind. 185, the supreme court, in the construction of the above section, on page 192, use this language:

"The statute already cited, section 5060, Burns' R. S. 1894, which requires that 'the capital stock, as fixed by such company, shall be paid into the treasury thereof, within eighteen months from the incorporation of the same,' means what it says. A sham payment, such as made in this case, was certainly never intended. Incorporators have no right to display an array of paid-up stock before the eyes of the public, unless money or property, dollar for dollar, stands behind each share of stock so held out to the world as paid up. * * *

"Simulated subscriptions by persons who have neither the ability or purpose to pay, and arrangements between the subscribers and the agents or promoters of a corporation, that subscriptions shall be merely colorable, are a fraud upon the law."

Now, let us lay side by side with the above statute and the decision thereon by the supreme court of Indiana the returns made by the appellee company each of the years 1892, 1893 and 1894.

In 1892, Mr. Sharpe, the secretary and treasurer of the company, who made the report for the company each year, filed a sworn report that the entire \$200,000 of capital stock, then authorized, was paid up.

(See Rec., p. 32.)

In 1893, the same officer swore that the \$360,000 of capital stock of the company was entirely paid up.

(See Rec., pp. 35, 36.)

In 1894, both the secretary and president swore to the return. (Rec., pp. 59 and 60.) They state that all of the 7,200 shares of stock had been actually issued. These are the same number of shares that the secretary swore were issued in his report for 1893.

In 1895, the secretary again swears to the appellee's statement.

(See Rec., pp. 51 and 52.)

He, however, again swears that 7,200 shares of stock were actually issued.

These shares of stock having been actually issued for more than two years, must be presumed to have been paid up. In fact from 1893, when the secretary swears that all of the stock had been fully paid up, it must be presumed to have continued as fully paid up stock during all the years in question.

VALUE OF CAPITAL STOCK.

Appellee's contention is that the capital stock, franchises, etc., of this company, should not be assessed for more than the tangible assets of the concern, for the reason that the capital stock of the company originally was traded for patents to various individuals.

We deny that the values of the patents for the respective years 1892, 1893, 1894 or 1895 were taxed. We assert that neither the patents themselves nor the value thereof were taxed. The question of the right to tax patents at all, we shall discuss in the last portion of this brief.

It is contended by appellee that the assessment made by the county board of review, which, by the law of Indiana, is the original assessment, was based upon the schedule of personal property filed by the appellee with its regular statement as a corporation.

The said schedule for 1892 does not appear in the record at all.

The said schedule for 1893 appears on pages 37-41 of the record.

The schedule for 1894 appears on pages 46-49 of the record.

The schedule for 1895 appears on pages 54-57 of the record.

Let us take each year by itself, and see if this is true.

1892.

The record, page 32, contains the company's statement for this year. It is made strictly in accordance with the language of the statute above shown in this brief. The market value of the shares of stock was sworn to be \$20,000. The personal property of the company was sworn to be worth \$5,000.

The county board assessed the property at the sworn valuation made by the company. The secretary, on page 34 of the record, testifies that the paid-up stock was \$20,000; that is plainly an error of the reporter and should read \$200,000, to correspond with his own sworn statement on page 32. When asked what kind of business the company was doing, the secretary answers:

"Manufacturing straw stackers on an improved patent of the old Buchanan cyclone business. It is a means of stacking straw with wind. That is what we are doing. We blast the air, or throw it through a chute. After we demonstrate it it becomes a great deal more valuable. We felt we were putting it at a fair value at \$20,000."

Whereupon the board fixed it at that price.

There is not a word in the record showing that the company owned any patents at all at that time. The assessment was made exactly for the amount sworn to by the secretary. There was no way for the board to know that the appellee owned a single patent, when it made the assessment for 1892. The value of the capital stock being greater than the value of the tangible property, it made the assessment pursuant to the law of Indiana.

It is true, when this suit was brought, two years later, Secretary Sharpe testified that the assets of the company in 1892 comprised certain machinery, material and cash in bank, amounting to \$5,000 (see Rec., p. 21). This excluded the value of all patents.

When asked upon what he based the value of the stock back in 1892, he said as follows (Rec., p. 21; Q. 12):

"Q. Please explain how the stock came to have any such value.

"A. Largely upon the faith of the investor that, in the development of the business, profits could be made that would warrant the investment."

Still further along, that the company then owned patents, and that the value of the stock was based entirely on the patents.

Still further along, that the company then owed a firm \$6,000.

On page 29 of the record, Sharpe again testified as follows:

"Q. What tangible property did the company have on the first day of April, 1892, and its value, if you know?

"A. It would be impossible to state the value, but the property consisted of machinery, material and money in bank.

"Q. Have you any idea of the value of the tangible property on the first day of April, 1892?

"A. My idea would be that it was principally in machinery and material, say about \$2,000 machinery, \$2,000 material and \$1,000 in cash. Now, I might be entirely wrong about that."

The board this year fixed the valuation at exactly the amount returned by the secretary.

For this year the sworn report appears on page 35 of the record. The capital stock had increased to

1893.

\$360,000. It was all paid up. Every share was actually issued. The market value was sworn to be \$36,000 by the secretary. The personal property had increased from \$5,000 in 1892 to \$33,900 in 1893. The indebtedness had increased to \$25,000. The company was notified to appear before the board (Rec., p. 42), but failed to do so, and the board fixed the assessment at the valuation of stock sworn to by the secretary. The stock being more valuable than the tangible property, it was assessed at such pursuant to the statute as heretofore set out.

In this statement of the corporation, nothing is said about patents.

It is true a schedule of personal property appears on page 37. This schedule shows that this company had credits to the extent of \$24,744. These credits have nothing to do with the patents, nor are any patents figured in with the list. These consist of notes, accounts and bank deposits. In addition to this \$24,744 of credits, it had \$11,900 of other tangible assets, wholly exclusive of all patents, making a total of \$36,644 of actual cash tangible assets in 1893, according to this schedule that appears in the record. It is true in that schedule the number of patent rights and value is given as \$25,000 (Rec., p. 38).

The company did not appear at the hearing of the county board of review.

(See Rec., p. 42.)

On page 29 of the record the secretary of the company says:

"Q. If the Indiana Manufacturing Company had any tangible property on the first day of April, 1893, please state what kind, and give its value.

"A. It had stackers in process of manufacture to the amount of \$3,500; material, \$2,000; machinery, \$2,000, and other property amounting in total to \$8,900."

1894.

In 1894 the value of the shares was placed by the company at \$36,000. The indebtedness at \$50,000, and the personal property within the state at \$32,645. (See Rec., pp. 59 and 60.)

This year the company appeared before the board of review and for the first time suggested anything respecting the value of patents, at the hearing before the board of review. (See stipulation of omitted testimony filed in this case, pages 1 to 4, and attached to the original record.)

The attorney for the appellee, on page 1, has this colloquy with the county treasurer, Mr. Holt:

"Mr. Holt: Your capital stock is \$360,000?

"Mr. Bradford: That is pretty nearly all wind.

"Q. What are the patents included at?

"A. \$25,000.

"Q. The balance is cash, the balance is tangible property, actual value?

"A. Yes, the remainder of the return is justly taxable. The patents we hold are not justly taxable.

"Q. Where is the other tangible property?

"A. It is some machinery in the shop across the river, threshing machines, straw stackers, office furniture, and one thing and another.

"Q. This represents the value of the patents—\$25,000?

"A. That is the value of their patents.

"Q. The capital stock is \$360,000, and \$25,000 of that is included in the patent?

"A. Of all the value returned, \$25,000 is on account of the patents.

"Q. That would leave \$335,000 of paid-up capital stock?

"A. ———."

As showing that the value of the patents was not taken into consideration at all in valuing the capital stock, we refer to the following colloquy, on page 2 of said stipulated statement:

"Mr. Taggart (the auditor): There is one question here—'If no market value, then the actual value, of your stock, \$36,000'—you can not get away from that question. We are not bothering your patents. The patents are not taken into consideration."

Then follows the examination by Mr. Holt, treasurer, of Mr. McKain, the president of the company, that must be conclusive evidence as to the value of the capital stock:

"Mr. Holt: What is the stock worth?

"Mr. McKain: I would not want to take anything like this for mine.

Mr. Holt: What do you think it is worth on the dollar? Is it worth par?

Mr. McKain: Yes sir, I think it is.

Mr. Holt: What is the capital stock?

Mr. McKain: \$360,000. I would just as soon you would assess it at that as \$36,000."

Thereupon, the board assessed the stock at one-tenth of what the president, who owns a majority of all the stock, testified it is worth. The assessment was placed at \$36,000.

For this year the sworn return of the officers of the company and its statement by its counsel before the board, are that the total value of the patents is \$25,000. The president of the company, the owner of the controlling interest in the stock, swears that the stock is worth par.

What then makes up the difference between the value of the patents and the value of the capital stock, to wit: \$335,000?

It must be the value of the manufacturing plant; the manufacture of threshing machinery under the patents. It is true patents may be used in the manufacture of them; but for the year 1894, the franchise, tangible property, good will and business of this concern, must have been worth very much more than the \$36,000 for which it was assessed, and this wholly independent of all consideration concerning patents or their value.

It is true on page 31 of the record the auditor is made to say in a certificate that the item of patents was taken into consideration in fixing the said assessment. This is not a part of the certificate, has no right to be there, or to be considered as such, and was wholly unnecessary. And there was no authority in law for the auditor to make such a certificate.

His statement in that certificate is wholly at variance with the statement above quoted, when he was acting as an officer on the board, where it was his duty to act under oath. Evidently, in the above certificate the auditor meant to say that they took into consideration the patents in fixing the assessment, but did not add the value of the patents to the value of the capital stock. This must be true, from an examination of the evidence taken before the board at its meeting in 1894, as shown in the proceedings thereof above quoted.

On page 23 of the record, the secretary of the company swears that in the year 1894, the indebtedness of the company amounted to \$50,000.

1895.

Before the statement for this year was filed, the appellee had brought suit in the federal court to enjoin the payment of taxes, and the statement of the company was prepared with reference to this suit.

On page 51 of the record, the company's statement for the year appears. It reiterates that 7,200 shares

of the capital stock are actually issued. As to the question "market value of the shares of stock," the answer is "don't know." To the question "actual value," no answer was given.

Instead of a frank answer, as had been given before the lawsuit began, this expression is voluntarily injected by the company in its tax return for 1895.

"The entire capital stock was issued in exchange for certain patent rights or letters patent, and has no value except such as it derives from such patent rights. The tangible property of the corporation is not sufficient to meet its indebtedness."

Further on the company, on page 52, reports its indebtedness at \$50,000, and this excludes the amount paid for the purchase or improvement of property, and the indebtedness for current expenses. The company reports \$10,137 of personal property. It also reports a difference in value between the tangible property and capital stock of \$39,863.

On page 53 of the record, the personal property schedule which accompanied the corporate statement of the company was a statement for this year, that the company had credits \$22,891; indebtedness, \$50,000; personal property, \$10,137. For this year no patents were reported at all, nor was any value of patents reported, and yet, the company reports actual credits and personal assets amounting to \$33,028. In addition to this, it owed \$50,000 debts.

The board assessed the company at \$36,000.

The record does not show that the company appeared before the board of review at its hearing in 1895, to either remonstrate or object to the assessment, or to enlighten the board in any particular or upon any subject.

Sale of Stock.

On pages 28 and 29, the secretary shows various sales of stock of the company, as follows, \$50 being the par value of the stock:

March 19, 1892...	3 $\frac{3}{4}$ shares at	10 per cent.
October 9, 1892...	5 "	20 "
January 12, 1893...	" "	15 to 18 "
October 20, 1893...	7 "	par.
November 17, 1893	80 "	45 "
1893.....1,000	"	20 "
December, 28, 1894	3 "	66 $\frac{2}{3}$ "

Total.....1,098 $\frac{3}{4}$ shares.

Here we have a sale for cash, for real estate, for trade of various kinds, of the stock of this company to various individuals, from 1892 to 1894. None of it ever sold for less than ten per cent., and from that figure on up to par. It was never assessed for taxation at over ten per cent.

What helped to make up this value? It was everything that makes a prosperous manufacturing company. It is the plant, the franchise, the business capacity of the officers, the energy with which the business is conducted, the care, prudence and foresight of

its managers, and the money spent in conducting and advertising the business, and many other things.

On page 30 of the record, the secretary testifies that this company expends between forty and fifty thousand dollars per annum for advertising, expense of purchasing and delivering catalogues, traveling expenses in effecting royalty contracts and introducing the stacker to the notice of the manufacturers and thresher men; that its business extends to all the wheat growing sections of the United States.

It is true that after the lawsuit was contemplated and in motion, the officers injected into their statements conspicuously the value of their patents.

*The Board did not Add Value of the patents in
Fixing Assessments.*

The county board has no interest other than to be fair between all taxpayers. The assessment of this company at one-tenth of the par value of the stock, in the face of the sworn statement of the president, that the stock was worth par, shows that the board did not entertain hostile feelings toward the appellee.

We ask the court to read carefully the answer on page 11 of the record. Each member of the board swears to it. That answer, as before set forth in this brief, after reciting the assessment for the various years, says:

"But these defendants further say that the plaintiff is a corporation doing a lucrative manu-

facturing business, which was well established and widely known, with a large amount of tangible property and a valuable franchise, exclusive of patents; that the market value of the stock of plaintiff, at the time for making the assessment for the year 1894 was \$360,000, as defendants are informed and believe; that the value of said stock, at the time for making the assessments for the years 1892 and 1893 was at least \$180,000, as defendants are informed and believe."

Then the board meets the proposition fairly as to the assessment of patents or patent rights, or the including thereof in the assessments made against the company. The sworn answer continues:

"Defendants further say that the said board of review, in making said assessments for the years 1892, 1893 and 1894, the patents, if any plaintiff had, were in no way or manner included or considered, and that said board, in making said assessments, considered only the legally taxable property of plaintiff and no other."

In the face of this sworn answer, can a court, in an indirect, collateral proceeding, say that this assessment was erroneous, and that said board did take into consideration the assessment of these patents?

Can this assessment of the board be assailed collaterally, and lowered or raised?

Is the court going out into the field of speculation, to make assessments against individuals and corporations? Will it determine where, in the sliding scale of values, the state, the county, the city must stop in

its assessment? Is the court to furnish the yard stick for measuring values?

If it can do so in this case, it can do so in every case.

It is true the question of the value of patents is attempted to be injected in this case.

Almost every manufacturing company is operating under patents. The sleeping car companies; electric manufacturing companies; surgical instrument manufacturing companies; steel tool companies; railroad supply companies—in fact, most manufacturing companies that are prosperous are operating under patents, and their great profit comes from manufacturing articles under patents.

The court has no right to revise the value of property fixed by taxing officers for taxation except in case of fraud.

In the case of *Koskuk & H. Bridge Company v. People*, 161 Ill. 132, on page 140, the supreme court of Illinois say:

"In fixing the value of property for taxation the assessor acts judicially, and the courts have no power to revise an assessment made by him merely because of a difference of opinion as to the reasonableness of the valuation placed upon the property."

The court then discusses the remedy and holds that he must wait until the assessment is made and then defend, if there has been a fraudulent assessment, using this language:

"But on an application for judgment against lands for delinquent taxes a defense may be made that a tax is unauthorized by law, or is assessed upon property not subject to taxation, or that the property has been fraudulently assessed at too high a rate."

Again, the supreme court of Illinois, in the case of *Keokuk & H. Bridge Company v. People*, 161 Ill. 514, on page 517, say:

"Appellant, then, has had the benefit of the judgment of all the persons and boards known to our law whose province it is to pass upon the valuation of property for the purposes of assessment for taxation. Even if its property was assessed more in proportion to its value than other property in the township was assessed, and more than it should have been, yet it is plain there was no authority in the county court, upon the application for judgment, to either grant relief or refuse judgment, unless it was made apparent that there was fraud in the making of the assessment. Fraud is never presumed, but must be established by sufficient evidence; and especially could no presumption of fraud be indulged when the action of the assessor has been challenged before each of the two boards of review that the law has provided for revising his assessments, and has met with their approbation. The mere fact of overvaluation does not, of itself, establish fraud."

But assume that it was assessed too high by the board. This does not warrant the injunctive hand of

the court to stay the tax officers. On page 519, the court proceeds:

"We are inclined to the conclusion, that while the assessor did not assess the property of appellant more than or even as much as its fair cash value, yet that he assessed it more in proportion to its value than he assessed other property in the township; but we find no evidence that satisfactorily establishes fraud, and justifies the conclusion that he did this from a wrong motive instead of an error of judgment, or that the boards of review acted from improper and fraudulent motives."

The supreme court of Indiana, in the case of *Cleveland, etc., Railway Company v. Backus*, 133 Ind. 513, define the law of Indiana upon this subject to be that no court can interfere or modify an assessment made by an assessing board, except it be for fraud. On page 536 the court use this language:

"The legislature, by the acts in question, has prescribed regulations for the purpose of securing the valuation of all property for taxation; the method prescribed would seem to have in view the fixing of the value on property by persons and boards best calculated to know the value of the property required to be valued by them, and with a view of arriving at a just and equal valuation of all the property within the state subject to taxation, providing county boards of review to correct errors of local assessors, and then a state board to fix the value of the property of railway companies extending through the state, and to equalize the valuations and assessments

of property throughout the state. That the method prescribed in the act is one calculated to secure a just and equal valuation and assessment of property throughout the state, can not be reasonably questioned, and is one which the legislature had the right to adopt."

Further along, on page 541, the court uses this language, which seems to us conclusive of the right of a court to interfere with the right of the taxing officers, by injunction, except in case of fraud:

"The state board having fixed the valuation and assessed the property, their action in this behalf is final, and can not be avoided or set aside, except for fraud on the part of the state board of tax commissioners, which would render the assessment void. Fraud vitiates even the most solemn judicial proceedings, and would likewise vitiate the proceedings of any tribunal created for the purpose of determining the rights of parties; but we do not think it can be seriously contended that the proceedings in this case seek to attack or avoid the valuation or assessment made by the state board, of appellant's property, on the ground that the state board was guilty of fraud, or acted corruptly in the discharge of its duties in the appraisement and assessment of the property of railway companies; and, if it were so contended, the averments of the complaint fall far short of being sufficient to present such a question. * * *

"The court having no power to review the proceedings, the action of the state board being final, no right of action existed to set it aside, except for fraud, and it not being attacked on that

ground, no evidence was admissible, for it is a well settled rule that the courts have no power to give any relief against erroneous assessments of such boards, except they are given such power by statute, and no such power is given in this state. *Cooley on Taxation*, p. 748, and authorities there cited; *Bass v. City of Ft. Wayne*, 121 Ind. 389; *Sims v. Hines*, 121 Ind. 534; *McCollum v. Uhl*, 128 Ind. 304; *Central, etc., Gravel Road Co. v. Black*, 32 Ind. 468."

We have been discussing the evidence in this case. This is unnecessary, except in case of fraud. The motives which control the board, or the information which it had received, are not matters into which the courts can look, nor over which it had any supervisory control. The mental processes by which the board reached the conclusion need not be diagrammed to a court.

The supreme court of Indiana, on page 542, upon this proposition, use this language:

"The court can not inquire into the evidence upon which the board made its assessment and determine as to whether such board arrived at just valuations or not. The board has passed upon that question, and with its adjudication the matter ends. The decision of the state board being final, the record of that board required to be kept by the law, section 121 of the act of 1891, is conclusive."

And, on page 546, further say, on this proposition:

"The board was not limited to the schedule of the railway companies and rates fixed by

them, but had the right to seek other information which would enable them to arrive at a just valuation. But this court can not consider or review the question as to what evidence the board relied upon in arriving at the value assessed. It is urged that the board heard a speech of an attorney in the absence of the railway companies and their counsel, on the question of the taxation of railroad property. Even if this were irregular, it does not vitiate the proceedings."

In the *Pittsburgh, etc., Railway Company v. Backus*, 133 Ind. 625, the supreme court of Indiana again take up the proposition of the finality of assessments fixed by assessing officers of the state. On page 652 the foregoing proposition is elaborated:

"The state board having fixed the valuation and assessed the property, their action in this behalf is final, and can not be avoided or set aside except for fraud on the part of the state board of tax commissioners, which would render the decision void. Fraud vitiates even the most solemn judicial proceedings, and would likewise vitiate the proceedings of any tribunal created for the purpose of determining the rights of parties, but we do not think it can be seriously contended that the proceedings in this case seek to attack or avoid the valuation or assessment made by the state board, of appellant's property, on the ground that the state board was guilty of fraud, or acted corruptly in the discharge of its duties in the appraisement and assessment of the property of railway companies, and if it were so contended, the averments of the complaint fall

far short of being sufficient to present such a question.

"What we have said disposes of the major portions of the questions presented in the case. The court having no power to review the proceedings, the action of the state board being final, no right of action existed to set it aside except for fraud, and, it not being attacked on that ground, no evidence was admissible; for it is a well settled rule that the courts have no power to give any relief against erroneous assessments of such boards, except they are given such power by statute, and no such power is given in this state. *Cooley on Taxation*, p. 748, and authorities there cited; *Bass v. City of Ft. Wayne*, 121 Ind. 389; *Sims v. Hines*, 121 Ind. 534; *McCollum v. Uhl*, 128 Ind. 304; *Center, etc., Gravel Road Co. v. Black*, 32 Ind. 468."

Further along, the court again discusses the right of the courts to inquire into the evidence, motives and mental processes by which the board reached the conclusion it did as to the assessment of property:

"The court can not inquire what evidence the board made its assessment upon, and determine as to whether such board arrived at a just valuation or not. The board has passed upon that question, and with its adjudication the matter ends.

"The decision of the state board being final, the record of that board required to be kept by the law, section 121 of the act of 1891, is conclusive."

Both of the above cases came to this court, and appear as follows:

154 U. S. 421;

154 U. S. 439.

This court in 154 U. S., p. 434, affirmed the decision of the supreme court of Indiana:

"The true cash value of the plaintiff's property in the state of Indiana in the year 1891 was a question of fact, the determination of which for the purposes of taxation was given to this special tribunal, the state board. Whenever a question of fact is thus submitted to the determination of a special tribunal, its decision creates something more than a mere presumption of fact, and if such determination comes into inquiry before the courts it can not be overthrown by evidence going only to show that the fact was otherwise than as so found and determined. Here the question determined by the state board was the value of certain property."

This language is approved again in the case of *Adams Express Company v. Ohio*, 165 U. S., p. 229.

What makes up the value of the capital stock?

The supreme court of Indiana, in the case of *Hyland v. Central Iron & Steel Company*, 129 Ind. 68, construe the statute hereinabove set out, defining the method of returning and assessing the capital stock of domestic corporations in Indiana, and on page 70 say:

"It can not be assumed that the tangible property necessarily represents the value of the capital stock, for the business of a corporation owning comparatively little tangible property may be so profitable as to impress upon its stock a value much beyond its tangible property; or it may be

the owner of a franchise which gives the stock a value much greater than that of the tangible property of which it is the owner. A corporation which, in its sworn return, values its capital stock at almost five times as much as its tangible property, can not successfully assert that the taxation of its tangible property entirely absolves its capital stock from liability. It is, at all events, entirely clear that where it affirmatively appears, as it does from the evidence in this case, that the tangible property is not equal to the value of the stock, the stock is taxable to the extent that it exceeds in value the tangible property."

As an answer to the proposition that only the tangible property must be assessed, the court, on page 71, proceeds:

"The only evidence as to the value of the capital stock, as well as the only evidence of the value of the tangible property, was that contained in the tax-lists, or schedule, and that certainly does not prove, or tend to prove, that there was double taxation, since the actual value of the capital stock is shown to exceed that of the tangible property more than one hundred thousand dollars. * * *

"Here there was jurisdiction, for here there was a list placed before the board of equalization, as the law requires. That list disclosed property subject to taxation, and on that property—the capital stock—the statute expressly makes it the duty of the board to place a value. It may well be doubted whether the courts can interfere at all in such a case as this, for the rule supported by the weight of authority is, that

where there is jurisdiction and no principle of law is violated, the valuation of the board of equalization is conclusive. *Cooley on Taxation*, 747, 748; *Small v. City of Lawrenceburgh*, 128 Ind. 231; *Board, etc., v. Senn*, 117 Ind. 410. There is here no evidence that the valuation of the board was erroneous, and, certainly, no reason for setting it aside, even if the courts had power to do so. If the board had placed a much greater value upon the capital stock than that fixed by the appellee in the schedule, its action could not, under the rule referred to, be disturbed unless it was made to appear that some principle of law was violated."

This court, in the *Backus* case, 154 U. S., page 445, say:

"But the value of the property results from the use to which it is put and varies with the profitableness of that use, present and prospective, actual and anticipated. There is no pecuniary value outside of that which results from such use. The amount and profitable character of such use determines the value, and if property is taxed at its actual cash value it is taxed upon something which is created by the uses to which it is put. In the nature of things it is practically impossible—at least in respect to railroad property—to divide its value, and determine how much is caused by one use to which it is put and how much by another."

In the *State Railroad Tax Cases*, 92 U. S., p. 602, this language appears:

"It is obvious, however, that while a fair assessment under these two descriptions of property

will include all the visible or tangible property of the corporation, it may or may not include all its wealth. There may be other property of a class not visible or tangible which ought to respond to taxation, and which the state has a right to subject to taxation. Thus it may occur, as in fact is claimed by one of these companies, that, being insolvent, and its earnings not being sufficient to pay anything beyond its necessary expenses for operating the road and its repairs, this tangible property represents more than the real wealth of the company and its property. While, on the other hand, another one of these companies is so rich that, after paying its expenses and interest on a large amount of debt, it declares large dividends; and this interest and these dividends, when looked to in reference to what is called the tangible property, show that there is here another element of wealth which ought to pay its share of the taxes.

"This element the state of Illinois calls the value of the franchise and capital stock of the corporation—the value of the right to use this tangible property in a special manner for the purposes of gain. This constitutes the third valuation, which is likewise to be made by the board of equalization."

Further along, on page 602, the court define "capital stock."

"The words '*capital stock*,' as here used, do not mean the shares of the stock, but the aggregate capital of the company."

As a method of ascertaining the value of such capital stock, the board have a right to include the in-

debtedness of the company, as well as the assets, in estimating the value of the capital stock.

This is well stated by this court on page 605, *supra*:

"It is therefore obvious, that, when you have ascertained the current cash value of the whole funded debt, and the current cash value of the entire number of shares, you have, by the action of those who above all others can best estimate it, ascertained the true value of the road, all its property, its capital stock, and its franchises; for these are all represented by the value of its bonded debt and of the shares of its capital stock."

When this has been ascertained by the board, shall it be said that the opinion of the court is better than the opinion of this board?

This court, on page 610, *supra*, has said "no," in this language:

"As we do not know on what evidence the board acted in regard to these railroads, or whether they did not act on knowledge which they possessed themselves, and as all valuation of property is more or less matter of opinion, we see no reason why the opinion of this court, or of the circuit court, should be better, or should be substituted for that of the board, whose opinion the law has declared to be the one to govern in the matter."

On page 612, *supra*, the court continues:

"But suppose it were otherwise; perfect equality and perfect uniformity of taxation as regards individuals or corporations, or the different

classes of property subject to taxation, is a dream unrealized. It may be admitted that the system which most nearly attains this is the best. But the most complete system which can be devised, must, when we consider the immense variety of subjects which it necessarily embraces, be imperfect. And when we come to its application to the property of all the citizens, and of those who are not citizens, in all the localities of a large state like Illinois, the application being made by men whose judgments and opinions must vary as they are affected by all the circumstances brought to bear upon each individual, the result must inevitably partake largely of the imperfection of human nature, and of the evidence on which human judgment is founded."

On page 616 this terse language appears:

"If there is an excessive estimate of the value of the franchise or capital stock, or both, it is by an error of judgment in the officers to whose judgment the law confided that matter; and it does not lie with the court to substitute its own judgment for that of the tribunal expressly created for that purpose."

This question was again presented to this court in the Express Company cases from Ohio and Indiana, and, in the Ohio case, 165 U. S., p. 223, this court approved the language of the supreme court of Ohio:

"But, taking the market value of the entire capital stock as a datum, the board is to be only guided thereby in ascertaining the true value in

money of the company's property in this state. The statute does not bind the board to find the value of the entire property of the company equal to that of the entire capital stock.

"But the property of a corporation may be regarded in the aggregate, as a unit, an entirety, as a plant designed for a specific object; and its value may be estimated not in parts, but taken as a whole. If the market value—perhaps the closest approximation to the true value in money—of the corporate property as a whole, were inquired into, the market value of the capital stock would become a controlling factor in fixing the value of the property."

And again, on page 224, this court approves the language of the supreme court of Ohio, to the effect that the *good will* of the concern, and the skill and experience may make capital stock valuable when the tangible property is of meager consequence.

"If by reason of the good will of the concern, or the skill, experience and energy with which its business is conducted, the market value of the capital stock is largely increased, whereby the value of the tangible property of the corporation, considered as an entire plant, acquires a greater market value than it otherwise would have had, it can not properly be said not to be its true value in money within the meaning of the constitution, because good will and other elements indirectly entered into its value. The market value of property is what it will bring when sold as such property is ordinarily sold in the community where it is situated; and the

fact that it is its market value can not be questioned because attributed somewhat to good will, franchise, skilful management of the property or any other legitimate agency."

Further along, the court approves the doctrine that the *earning capacity* of property may be taken into consideration in fixing values, and say, on page 225:

"It will, we think, be conceded that the earning capacity of real estate owned by the individuals may be considered in fixing its value for taxation. Take an office building on a prominent street in one of our large cities. It will not be doubted, that by care in the selection of tenants, and in the preservation of the reputation of the building, by superior elevator service, by vigilance in guarding and protecting the property, by the exercise of skill and knowledge in the general management of the premises, a good will of the establishment will be promoted, which will tend to an extra increase in the earning capacity and value of the building. For the purpose of taxation, it would be none the less the true value in money of the building, because contributed to by the operative causes that gave rise to the good will. We discover no satisfactory reason why the same rule should not apply to the valuation of corporate property—why the selling value of the capital stock, as affected by the good will of the business, should be excluded from the consideration of the board of appraisers and assessors under the Nichols law, charged with the valuation of the corporate property in this state, especially as the capital stock, when paid up, practically represents at least an equal value of the corporate property."

When this case came up for re-hearing, this court further elaborated the subject of values of capital stock, and defined some of the elements that go to make up such values. In 166 U. S., on page 219, this language appears:

"It matters not in what this intangible property consists—whether privileges, corporate franchises, contracts or obligations. It is enough that it is property which though intangible exists, which has value, produces income and passes current in the markets of the world. To ignore this intangible property, or to hold that it is not subject to taxation at its accepted value, is to eliminate from the reach of the taxing power a large portion of the wealth of the country. Now, whenever separate articles of tangible property are joined together, not simply by a unity of ownership, but in a unity of use, there is not infrequently developed a property, intangible though it may be, which in value exceeds the aggregate of the value of the separate pieces of tangible property. Upon what theory of substantial right can it be adjudged that the value of this intangible property must be excluded from the tax lists, and the only property placed thereon be the separate pieces of tangible property?

"The first question to be considered therefore is whether there is belonging to these express companies intangible property—property differing from the tangible property—a property created by either the combined use or the manner of use of the separate articles of tangible property, or the grant or acquisition of franchises or

privileges, or all together. To say that there can be no such intangible property, that it is something of no value, is to insult the common intelligence of every man."

On page 220, this court asserts the cardinal principle respecting the taxable value of property:

"Now, it is a cardinal rule which should never be forgotten that whatever property is worth for the purposes of income and sale it is also worth for purposes of taxation."

We know of no single sentence in the books that contains a more comprehensive statement of the law of taxation of corporate stocks, franchises and property than is contained in the above sentence.

On page 221, this court enumerates further elements of value:

"The capital stock of a corporation and the shares in a joint stock company represent not only the tangible property, but also the intangible, including therein all corporate franchises and all contracts, privileges and good will of the concern."

And on page 222:

"But what a mockery of substantial justice it would be for a corporation, whose property is worth to its stockholders for the purposes of income and sale \$16,800,000, to be adjudged liable for taxation upon only one-fourth of that amount. The value which property bears in the market, the amount for which its stock can be

bought and sold, is the real value. Business men do not pay cash for property in moonshine or dreamland. They buy and pay for that which is of value in its power to produce income, or for purposes of sale."

We have thus fully quoted the authorities upon the subject of values of capital stock and the finality of the valuation placed thereon by the board of review, believing that the substance of the law, as defined by the supreme court of Indiana and the United States, is conclusive against the injunction granted in this case.

Putting side by side the sworn statement of the president of this company that the capital stock of this company was worth \$360,000 in 1894, and its statement that its patents were worth \$25,000, together with the sworn answer of the board of review that it did not take into consideration the value of the patents and the record of sales of stock made, is it not fair to conclude that the Marion county board of review assessed the value of this stock far below its actual value, exclusive of patents, rather than above the value of such stock?

What difference does it make, if some or all of this stock was originally, years ago, traded for patents? They were not purchased of the patentee; it was a matter of speculation with the stockholders. The company, after purchase of the patents, expended forty to fifty thousand dollars a year in advertising and building up the business; it had a manufacturing

plant, machinery, tools, fixtures; it had threshing machines; it had cash; it had a franchise that was taxable; its debts ran up to \$50,000; it had large tangible assets, both bills receivable, notes and accounts and other tangible property.

Admittedly it is doing a very prosperous business, or the president would take par for his stock. He has been in the company from the beginning and presumably knows as much about its value as any other person in the company.

Taking all these things into consideration, can this court, or any court, say that the assessment fixed by the county board shall be stricken down for fraud or illegality? Can this court say that the board took into consideration any part of the value of the patents in assessing said stock?

Summing up this branch of the argument, we say:

First. That the court erred in granting the injunction, because the court can not inquire into the valuation placed upon the capital stock of this company, except in case of fraud.

Second. The court can not inquire into the source of information or mental processes by which the board arrived at the value of the capital stock of appellee.

Third. The decision of the board of review was final and can not be assailed in this proceeding.

Fourth. The assessment placed upon the capital stock of appellee is sustained by the great weight of testimony in the case.

Fifth. The value of the patents was not added in making up the assessment.

Sixth. The assessment fixed by the county board of review was fair, just and equitable, and can not be assailed in a court of chancery in a proceeding for injunction.

Third. The value of patent rights owned by a manufacturing company can not be deducted from the aggregate assessment made against the shares of capital stock of such company.

The assessment complained of in this case was made against the shares of capital stock of an Indiana manufacturing company. It was not made against any patent or patents. The Indiana statute for such assessment is set forth in a former part of this brief.

Neither of the tax statements filed by the appellee for the years 1892 (Rec., p. 32), 1893 (Rec., p. 35), 1894 (Rec., p. 59), 1895 (Rec., p. 51), contained any statement by the company as to the value of any franchise or privilege owned by it. In neither of these statements does the company fix or attempt to fix any value whatever on patents owned by it.

For the years 1892, 1893 and 1894, it does not refer at all to any patents owned by it, and in the statement for 1895, it states that the entire capital stock was issued in exchange for certain patent rights or letters patent. The court will notice that nowhere in its sworn statement does the company fix any value upon its patents.

In its schedule of personal property, it fixed the value of patents at \$25,000; but in its sworn statement of the value of its capital stock, as a manufacturing company, and of its assets generally on which the assessment for taxes is made, there is no reference at all, in the years 1892, 1893 and 1894, to the ownership of patents, or the value thereof; and in the statement for 1895, it does not give the value thereof.

Therefore, no assessment whatever was placed against the patents *eo nomine*, for either of the years 1892, 1893, 1894 or 1895.

The appellee contends that since all of the capital stock of the company was originally traded for certain patent rights, no assessment whatever can be made against the company during the life of the patents, except upon the naked actual tangible property; that it matters not how much may be expended in the development of the business (which, in this case, amounts to hundreds of thousands of dollars), it can not affect the legal status of the stock; that during all the years of the lives of these patents, or the extension of such patents—if such there be—this stock is exempt from taxes.

We insist that if the patents were worth anything, they simply go to make up, with all other assets of the company, the value of the shares of stock thereof. This is not a case where *a part of the stock* of the company was exchanged for patents, but, in this case, *all* of the stock is charged to have been traded for patents.

Therefore, if large expenditures of money in advertising, great energy displayed by its officers, and skill in the management of its business, shall result in building up a plant, the shares of stock of which shall be worth \$1,000,000, and the tangible property but \$50,000, no assessment can ever be made for any purpose of taxation, except upon the \$50,000.

That is the proposition. It not only involves this case, but involves thousands of other cases, where part or all of the capital stock was originally traded for patents.

We are not here contending that the patents, *eo nomine*, are taxable. We do contend, however, that the great weight of authorities supports the proposition that the value of patent rights owned by a manufacturing company can not be deducted from the aggregate assessment made against the shares of capital stock of such company.

We shall now review all of the cases that bear directly upon this proposition.

This court has never passed upon the question.

The only courts that are apparently not in harmony with this view, are the courts of Pennsylvania and New York.

In the case of *Commonwealth v. Westinghouse Mfg. Co.*, 151 Pa. St. 265, the supreme court of that state affirm the decision of the *nisi prius* court, which held that the portion of the capital stock of the Pennsylvania corporation, invested in patent rights can not be taxed by the state.

This is the case that will be largely relied upon by appellee. In the statement of the case it appears that that company was expressly authorized to "make purchases and sales of and investments in the securities of other companies," and to do many other enumerated things which were not manufacturing.

The opinion is very brief, and does not discuss the general proposition. That court has affirmed, in two or three other cases, the exemption of such stock from taxation; all without an opinion, however, or discussion of the proposition.

The New York court of appeals has entertained two views of this question directly opposite each other. The first case is that of *People v. Campbell*, 138 N. Y. 543. Here the court of appeals, in a learned opinion rendered by Earl, Judge, hold that the value of patents held by a manufacturing company is to be included in the taxation of its capital stock.

In that case, as in this, the company was a domestic corporation, with a capital of \$1,500,000. It was assessed by the comptroller for \$3,000,000. There, as here, the company did not complain that the value placed upon its capital stock was too high. It did contend that it ought not to be assessed upon securities that were purchased with patent rights. In that case the entire capital stock of the company was originally invested in patent rights. Corporations were formed in various cities to use these patent rights; in consider-

ation for which the company received stocks of such corporations.

On page 545, the court say:

"So much of its capital, to wit, its patents, as was used to purchase such stocks, was employed for that purpose, *and was thus used for the business of the relator.* * * * They took the place as a portion of the relator's capital of the patent rights transferred in payment for them.
* * *

"It took a portion of its capital, to wit, a portion of its patent rights, and employed it outside of the state to purchase those stocks. * * *

"It is said in this record, although not distinctly shown, that the relator also held bonds of foreign corporations issued to it in payment for patent rights granted. We think that so much of the capital as was invested in such bonds was a basis of taxation here, under the act. *
* * The bonds took the place of the patent rights granted for their purchase."

The above quotation referred to bonds that were in the hands of the company, taken in exchange for patent rights. This is the first proposition discussed in that case. After the court had disposed of that, it took up the direct question here presented, namely: Shall the patents that have not been sold by the company be assessed for taxation?

On page 547, the court answers that question affirmatively and decisively:

"A patent is an incorporeal right—a franchise, conferred by the sovereign power upon the patentee. It is personal to him, and until he is divested of the title thereto, like other personal rights, it attends his person and exists where he is or where he puts it to use. We are, therefore, of opinion that the comptroller did not err *in including in the capital of the relator*, to be estimated for taxation, its patents, so far as they had not been disposed of."

This case is distinguished in the case of *Crown Cork and Seal Co. v. State*, 87 Md., p. 687.

The question re-appears in the case of *People ex rel. Edison El. Il. Co. v. Assessors*, 156 N. Y., p. 417. Here, that court express a view directly contrary to that expressed by it in the case above quoted. It does so without referring to the above cited case. A part of the capital stock of the Edison Company was invested in patent rights.

The court held that the capital stock of the company was not liable for assessment for taxes, for the value of patent rights held by the company. This decision is based upon the proposition that patent rights are granted under the federal constitution, for federal purposes.

This decision, as well as the Pennsylvania case above quoted, is based upon a statement made in the *United States Bank case—McCulloch v. Maryland*, 4 Wheat. 316. That case was an attempt to tax the United States Bank, which was an undoubted federal agency; that case will be further discussed in this brief.

The above are the only cases that we have been able to find passed upon by the courts of last resort, where the question here presented was discussed and decided against the right to tax the capital stock of a manufacturing company including the value of patents.

In the United States Bank case, *supra*, the court, in a general discussion of the right to tax the federal agencies, refer, as an illustration of such right, to the right to tax patent rights. It will be observed that in this case there is no attempt, we insist, to tax patent rights.

Let us now examine the cases holding the opposite view—the one that we insist is the correct one.

The most elaborately argued case in the books, where this precise question is presented, is the case of the Crown Cork and Seal Co. v. Maryland, 87 Md. 687.

The court here discusses all of the cases then reported bearing upon the question. The stock of the company was assessed at its full value, no deductions being made for the value of patents, and the court, on page 695, say that the leading question in that case was whether, in the assessment of the capital stock of the appellant company, for purposes of taxation, the appellant is entitled to have the assessment limited to the value of the property other than the patents granted by the United States. That is the precise question which we present here.

There, the taxes were levied without any regard to the value of the United States patents. The tax com-

missioner assessed the value of the shares of stock, and certified the return, and, on page 697 the court meets the proposition here presented in these words:

"It is insisted that they (the taxing officers) have erroneously valued and assessed the patent rights in question, and this is the chief grievance of the appellant. But why should not the shares of stock in the appellant corporation be valued and assessed and taxes paid thereon? The number of corporations incorporated under the laws of this state, engaged in business here, employing vast sums of money and possessed of extensive property rights, is almost unlimited, and yet most of them, in the proper and successful management of their business, have been compelled to purchase and use patent rights, to enable them to compete successfully with other corporations engaged in a similar business. They are without exception compelled to pay taxes on their shares of stock levied and assessed in like manner with those in controversy here. *It is a total misconception of the object sought to be maintained on this appeal to assert that this is an effort to tax patent rights.*"

The court, then continuing its vigorous discussion of this question, and of the right to tax patents, *eo nomine*, say:

"It is not, however, necessary to the determination of the rights involved in this controversy, to decide any such question. It is a proposition about which there is no lingering doubt, that patent rights are personal property and entitled to the same protection as any other prop-

erty (*Cammeyer v. Newton*, 94 U. S. 225); and it will remain for future consideration, whether a patent right may not of itself be a proper subject of taxation, but that as just stated is not a question necessary to be decided on this appeal."

Further along, on page 698, recurring to the original proposition of the right to tax the shares of stock, notwithstanding some of the value thereof may be made up of patent rights or franchises, this language appears:

"To say that the shares of stock of a corporation incorporated under the laws of this state can not be taxed because the corporation enjoys certain *franchises*, the very use of which enables it to successfully carry on its business, would be to strike down our entire system of taxation relating to corporations. And even if it be true that a patent right exists through the medium of a contract with the federal government, its only effect upon the value of the shares of stock of a corporation, which are unquestionably taxable, is to aid in the development of the business interests of such corporation, and largely multiply the chances of its successful management. So that it is not a question as to how the value of the shares of stock of such corporation have been enhanced, whether by the aid of patent rights, or by the sale of the manufactured product obtained by the use of such patent rights, or by the superior business qualifications of the agents of the corporation, who manage and control its affairs. *It matters not how numerous nor how valuable its patent rights might have been at the inception*

of the appellant's business enterprise, the shares of its stock would now be comparatively valueless had not other agencies, forceful and active, put life and energy into the undertaking."

What is the scope of the patents granted? What is their operation? What does the government grant, or give? These questions are answered on page 699, *supra*:

"The supreme court of Ohio, speaking with respect to the meaning of the patent laws, of the United States, and quoted with approval in *Patterson v. Kentucky*, 97 U. S. 506, says: 'The sole operation of the statute is to enable him to prevent others from using the products of his labors except with his consent.' In the granting of patents, the federal government has never sought to do more, and in fact, has never exercised greater authority than to extend protection to the privilege, such as that granted by a patent for an invention, against the infringement of those who seek to invade it. * * *

"After careful examination we have failed to discover any satisfactory authority, showing that the government has ever yet indicated any intention of limiting the power of the states in dealing with a subject of this kind although involving patent rights. It is a proposition without support to seek to maintain that patent rights are agencies or instrumentalities of the general government with which the states have no right, in any manner to interfere."

On page 700, the court discusses the Pennsylvania case, above referred to, in this language:

"The result of our investigation is that we have found but two cases directly bearing upon the subject of the taxation of patent rights, as such, which is not the specific question to be determined on this appeal. The case which supports the theory of the exemption of patent rights from taxation is the case of the Commonwealth v. Westinghouse Electric, etc., Co., 151 Pa. St. 265. The supreme court of Pennsylvania having filed no opinion, adopted that of the lower court, from which we briefly quote, and which sufficiently marks the distinction between the Pennsylvania case and the one now under consideration. The former case maintains that, 'The tax being upon the capital stock, it is a tax upon the company's property and assets.' This is not the law of Maryland, and such view is not the accepted doctrine held by the U. S. supreme court. Bank of Commerce v. Tennessee, 161 U. S. 146."

The court then takes up the case of *People v. Campbell*, supra, decided by the New York court of appeals, as follows:

"We have referred to the one case, that of 151 Pa. St. supra, which maintains, the non-liability to taxation of patent rights; the case of the *People v. Campbell*, 138 N. Y. 543, maintains a doctrine *directly* contrary to the Pennsylvania case. The New York case was a proceeding by *certiorari* to review the action of the state comptroller in imposing a tax upon the relator, the Edison Electric Light Company, a domestic corporation, under the Corporation Tax Act. The entire capital stock of the relator was originally invested in patent rights." (Page 701.)

The court then quotes at length, with approval, the opinion rendered by Earl, Judge.

We have thus quoted extensively from the Maryland case, because it contains an elaborate argument upon the entire question, more so than can be found in any other case, and is a recent case.

The supreme court of New Jersey, in the case of Storage Battery Company v. Board, 60 N. J. L. 66, is in harmony with the Maryland case.

In the New Jersey case, the company was organized with \$10,000,000 capital, finally increased to \$13,500,000. It had a cash capital of but \$2,500. The balance of its capital was traded for patents.

Its entire capital stock of \$10,000,000, less twenty-five shares, was traded to Gibbs & Payen for certain patents held by them. Afterwards, the \$13,500,000 was issued and exchanged for other patents.

The state board assessed a tax upon the entire capitalization.

In that case a small amount of the capital was invested in the process of manufacture, and the court, after stating these facts, on page 69 use this conclusive language:

"A small part of its capital is invested in the process of manufacture. Nearly all of its capital stock issued and outstanding was issued for the purchase of the patent rights of which the company became the owner. These patents were granted by the United States, by Great Britain and Belgium, and the agreement with Payen, the inventor, comprehends all patents that might be

issued to him for his invention throughout the world. Corporations of the class to which this company belongs are taxable with respect to the amount of capital stock issued and outstanding as a fixed factor, *without regard to the purpose for which the capital stock was issued or whether issued for value or not.*"

The above are all of the cases we have been able to find that directly pass upon the question here presented. There are other cases, however, which we believe are controlling of the questions here involved.

Before any property is exempt from taxation, there must be a clear, well defined provision of the constitution, or of some statute, or by necessary implication, that will protect it from taxation. We can find no clearer statement of this proposition than that of this court in the case of *Bank of Commerce v. Tennessee*, 161 U. S. 134, on page 146:

"These cases show the principle upon which is founded the rule that a claim for exemption from taxation must be clearly made out. Taxes being the sole means by which sovereignties can maintain their existence, any claim on the part of any one to be exempt from the full payment of his share of taxes on any portion of his property must on that account be clearly defined and founded upon plain language.

"There must be no doubt or ambiguity in the language used upon which the claim to the exemption is founded. It has been said that a well founded doubt is fatal to the claim; no implication will be indulged in for the purpose of con-

struing the language used as giving the claim for exemption, where such claim is not founded upon the plain and clearly expressed intention of the taxing power."

The bonds and stocks of the United States are exempted by law from taxation, and yet, when those bonds get into the hands of a bank or corporation, the value of the shares of stock of such bank or corporation is taxed irrespective of the amount of United States securities held by such bank, and without regard to whether the whole or a part of the capital of such bank or corporation is invested in national securities.

This question was originally decided in the case of *Van Allen v. Assessors*, 70 U. S. 573. Van Allen insisted that the shares of stock of the bank were not subject to taxation, because all of the capital stock was invested in United States bonds.

On pages 581 and 582, this court, speaking through Judge Nelson, says:

"The main and important question involved, and the one which has been argued at great length and with eminent ability, is, whether the state possesses the power to authorize the taxation of the shares of these national banks in the hands of stockholders, whose capital is wholly vested in stock and bonds of the United States?

"The court are of opinion that this power is possessed by the state, and that it is due to the several cases which have been so fully and satisfactorily argued before us at this term, as well as to the public interest involved, that the question

should be finally disposed of. I shall proceed, therefore, to state, as briefly as practicable, the grounds, and reasons that have led to their judgment in the case."

On page 583, the court answers the objection that a tax upon the stocks of the bank is a tax upon the bonds of the United States:

"The suggestion is, that it is a tax by the state upon the bonds of the government which constitute the capital of the bank, and which this court has heretofore decided to be illegal. But this suggestion is scarcely well founded; for were we to admit, for the sake of the argument, this to be a tax of the bonds or capital stock of the bank, it is but a tax upon the new uses and new privileges conferred by the charter of the association; it is but a condition annexed to the enjoyment of this new use and new application of the bonds. * * *

"The tax on the shares is not a tax on the capital of the bank. The corporation is the legal owner of all the property of the bank, real and personal; and within the powers conferred upon it by the charter, and for the purposes for which it was created, can deal with the corporate property as absolutely as a private individual can deal with his own."

The right to tax the shares of national banks at their fair cash value, irrespective of the securities of the United States government held by such banks, was re-affirmed by this court in the case of *National Bank v. Commonwealth*, 76 U. S. 353. In that case

the entire capital stock was invested in securities of the government of the United States, and it was contended that they were not subject to taxation.

On page 361 is discussed the practice of many corporations to pay the taxes charged against them for the benefit of the shareholders. In Indiana the statute requires the corporations generally to pay the taxes upon the shares of its capital stock. This is for the convenience and also for the assurance of the payment of the taxes, where the stockholders are scattered throughout the state and throughout the United States. On page 361 this court say:

"It has been the practice of many of the states for a long time to require of its corporations, thus to pay the tax levied on their shareholders."

This court asserts a doctrine which we have tried to emphasize, namely: That there must be some statute, or some constitutional provision that prevents the states from assessing and collecting taxes upon the franchises of the government. This court uses this language:

"If the state can not require of the bank to pay the tax on the shares of its stock it must be because the constitution of the United States, or some act of Congress, forbids it. There is certainly no express provision of the constitution on the subject.

"But it is argued that the banks, being instrumentalities of the federal government, by which some of its important operations are conducted, can not be subjected to such state legislation. It

is certainly true that the Bank of the United States and its capital were held to be exempt from state taxation on the ground here stated, and this principle, laid down in the case of *McCulloch v. The State of Maryland*, has been repeatedly affirmed by the court."

And, on the next page—362—the court answers the argument that is made whenever the state's attempt to tax the franchises, so-called, of the government, namely, that the federal government's instrumentalities are liable to be taxed to death and destroyed. It is a reflection upon the state government that they can not be trusted to tax the results, or the instrumentalities themselves, of the government.

This court, answering all those arguments, say:

"The principle we are discussing has its limitation, a limitation growing out of the necessity on which the principle itself is founded. That limitation is, that the agencies of the federal government are only exempted from state legislation so far as that legislation may interfere with or impair their efficiency in performing the functions by which they are designed to serve that government. Any other rule would convert a principle founded alone in the necessity of securing to the government of the United States the means of exercising its legitimate powers, into an unauthorized and unjustifiable invasion of the rights of the states. * * * So of the banks. They are subject to the laws of the state, and are governed in their daily course of business far more by the laws of the state than of the

nation. All their contracts are governed and construed by state laws. Their acquisition and transfer of property, their right to collect their debts, and their liability to be sued for debts, are all based on state law. It is only when the state law incapacitates the banks from discharging their duties to the government that it becomes unconstitutional."

In the case of *Patterson v. Kentucky*, 97 U. S. 501, the appellant was fined in the state of Kentucky for violating certain Kentucky statutes regulating the sale of oils, the formula for which was covered by a patent. Patterson insisted that his patent protected him from prosecution.

On page 503 that suggestion is met in these words:

"It is true that letters-patent, pursuing the words of the statute, do, in terms, grant to the inventor, his heirs and assigns, the exclusive right to make, use and vend to others his invention or discovery, throughout the United States and the territories thereof. But, obviously, this right is not granted or secured without reference to the general powers which the several states of the Union unquestionably possess over their purely domestic affairs, whether of internal commerce or of police. * * *

"All which they primarily secure is the exclusive right in the discovery."

On page 507, this court continues the discussion of this question:

"The end of the statute was to encourage useful inventions, and to hold forth, as inducements to the inventor, the exclusive use of his inventions for a limited period. The sole operation of the statute is to enable him to prevent others from using the products of his labors except with his consent. But his own right of using is not enlarged or affected."

Railroad franchises are also granted by the United States; but, because of this fact, are all the states through which land-grant railroads, or railroads whose franchises were granted directly by the federal government, to forever escape taxation on that account? Are the stocks and bonds of the railroad company never to be assessed, because the railroad is operating under federal franchises? That question was presented to this court in the case of *Railroad Company v. Peniston*, 85 U. S. 5.

The doctrine is there again asserted that the state may exercise to an unlimited extent the right to tax property, except where limited by the federal law.

Speaking for this court, Mr. Justice Strong, on page 29, says:

"That the taxing power of a state is one of its attributes of sovereignty; that it exists independently of the constitution of the United States, and, underived from that instrument; and that it may be exercised to an unlimited extent upon all property, trades, business and avocations existing or carried on within the territorial bound-

boundaries of the state; except so far as it has been surrendered to the federal government, either expressly or by necessary implication, are propositions that have often been asserted by this court. * * * The constitution contains no express restriction of this power other than a prohibition to lay any duty of tonnage, or any impost, or duty on the imports or exports, except what may be absolutely necessary for executing the state's inspection laws. As was said in *Lane County v. Oregon*, 7 Wall. 77, 'In respect to property, business and persons within their respective limits, the power of taxation of the states remained, and remains entire, notwithstanding the constitution.'

It may be that a tax upon stock that had been exchanged for patent rights would remotely affect the value of such patent rights; but, are the states to be prohibited from taxing such shares of stock, because remotely the value of some patent right is affected?

This court, on page 30, *supra*, answer this question:

"It can not be that a state tax which remotely affects the efficient exercise of a federal power is for that reason alone inhibited by the constitution. To hold that would be to deny to the states all power to tax persons or property. Every tax levied by a state withdraws from the reach of federal taxation a portion of the property from which it is taken, and to that extent diminishes the subject upon which federal taxes may be laid."

The United States government does not have any stock or interest in the Indiana Manufacturing Company. It granted to certain individuals a patent right. Those individuals exchanged those patent rights for stock in the Indiana Manufacturing Company. Why should not that stock be assessed and taxed?

This court, at page 32, *supra*, use this pertinent language:

"Notwithstanding this, the railroad and the telegraph line are neither in whole nor in part the property of the government. The ownership is in the complainants, a private corporation, though existing for the performance of public duties. The government owns none of its stock."

How much less interest has the government in the Indiana Manufacturing Company than it had in the railroad of its own creation, and largely constructed by it? The Union Pacific Railroad Company was a great national highway, chartered and largely constructed by and for the United States government, and yet that did not prohibit the court from charging that company with the value of such franchise.

It is contended because of this governmental privilege given to an individual that the government must therefore prohibit states from taxing that federal privilege, for fear that, if not the privileges, the dignity of the United States government will be affected.

This court, on page 33, discuss that question, as follows:

"It may, therefore, be considered as settled that no constitutional implications prohibit a state tax upon the property of an agent of the government merely because it is the property of such an agent. A contrary doctrine would greatly embarrass the states in the collection of their necessary revenue without any corresponding advantage to the United States. A very large proportion of the property within the states is employed in execution of the powers of the government. It belongs to governmental agents, and it is not only used, but it is necessary for their agencies. United States mails, troops and munitions of war are carried upon almost every railroad. Telegraph lines are employed in the national service. So are steamboats, horses, stage coaches, foundries, ship yards, and multitudes of manufacturing establishments. * * * Were they exempt from liability to contribute to the revenue of the states it is manifest the state governments would be paralyzed."

Discussing the *McCulloch* and *Osborne* cases, 9 Wheat. 538, this court explains those decisions. In the former of those cases the tax was held unconstitutional because laid upon the notes of the bank; the latter case, the tax was held unconstitutional because it was a tax upon the existence of the bank itself.

It is true that this court, in the case of *California v. Railroad Company*, 127 U. S. 1, held that franchises *eo nomine* of the government can not be taxed. This court, however, in that case, on page 40, define what a franchise is, as follows:

"A franchise is a right, privilege or power of public concern, which ought not to be exercised by private individuals at their mere will and pleasure, but should be reserved for public control and administration, either by the government directly, or by public agents, acting under such conditions and regulations as the government may impose in the public interest, and for the public security."

Telegraph franchises are taxable, and the property of telegraph companies is likewise taxable. Telegraph franchises and railroad franchises are of vastly more public concern and are more direct instrumentalities of government than a patent could ever possibly be. In fact, we deny that a patent is an instrumentality of government at all. And yet, telegraph franchises are taxable.

This court, in the case of *Western Union Telegraph Company v. Massachusetts*, 125 U. S. 530, elaborately discuss this whole question. On page 547 the proposition is stated and argued as follows:

"The argument is very much pressed that it is a tax upon the franchise of the company, which franchise being derived from the United States by virtue of the statute above recited can not be taxed by a state, * * * by whatever name it may be called, as described in the laws of Massachusetts, it is essentially an excise upon the capital of the corporation. * * *

"The telegraph company derived its franchise to be a corporation and to exercise the function

of telegraphing from the state of New York. It owes its existence, its capacity to contract, its right to sue and be sued, and to exercise the business of telegraphy, to the laws of the state under which it is organized."

The court held that notwithstanding the telegraph company derived its franchise or right to string its wires along all the post roads of the United States, yet that did not withdraw from the states the power of taxing the stock of the company.

This proposition is more fully discussed in the case of the Western Union Telegraph Company v. Taggart, 163 U. S., p. 1. That was an Indiana case. The taxes were levied by the state board of tax commissioners. The telegraph company contended that the Indiana taxing officers had included the franchises of the telegraph company as part of the property assessed for taxation; that because such franchises were derived from the federal government, therefore the stock of the company could not be taxed for the value of such franchises.

On page 18, this court, in an elaborate opinion by Justice Gray, after discussing the Indiana taxing statute, cover in a single sentence the whole proposition presented in this case:

"Those decisions clearly establish that a statute of a state, requiring a telegraph company to pay a tax upon its property within the state, valued at such a proportion of the whole value of

its capital stock as the length of its lines within the state bears to the length of all its lines everywhere, * * * is constitutional and valid, notwithstanding that nothing is in terms directed to be deducted from the valuation, either for the value of its franchises from the United States or for the value of its real estate and machinery situated and taxed in other states."

On page 28:

"The bill * * * nowhere undertakes to fix the value of its franchises from the United States, the state of New York, and foreign countries; and the tax commissioners, by the authorities already cited, had the right and the duty, in estimating the value of the plaintiff's property in Indiana, to take into consideration those franchises and the other elements mentioned in this paragraph of the bill."

"The other elements" mentioned in the bill were the plaintiff's business; his property and good will, both in and out of the state; all in addition to the franchises above referred to.

But how is this court to ascertain from the record the valuation of the patents in question? By what sort of process is the court to ascertain just how much of the \$20,000 assessment in 1892, and of the \$36,000 in 1893, and the \$36,000 assessment in 1894, and again in 1895, is made up of the value of the patent rights held by the company?

All of the defendants, who are sworn officers, under oaths and under bond, say, under oath, that they did not assess these patents at all. Upon what evidence is this court going to find that they did? Nobody has testified on the subject. The only testimony that, even by inference, covers that question, is the \$25,000 statement of the secretary. The president says the stock is worth \$360,000. The highest assessment placed by the board was but \$36,000.

What sized mesh will this court use in its sieve, to separate the value of the patents from the value of the stock, exclusive of the value of the patents?

The complainant contends that the stock ought not to be assessed at all; that all that Indiana can do is to assess the tangible property. Is that true? Is it possible that because a company trades its stock for patents, that the injunctive hand of the federal court is to be laid upon the state to prevent it from assessing against this company the value of its capital stock, exclusive of the value of the patents? Shall all others of the hundreds of corporations in the various states be assessed for their good will, their business capacity, their expenditures in advertising, their building up of a great business, simply because such companies did not originally trade some or all of their capital stock for patents, while this company escapes such taxation?

And if not, how are the values of the patents to be determined? Shall they be valued at what they were worth when the patents were first taken out by the

patentee, or shall they be valued at the end of the first year, after thousands of dollars have been expended in exploiting them, in building up a great manufacturing business? Shall they be assessed at the end of the fifth year, when tens of thousands of dollars shall have been expended in building up the business throughout the state—perhaps extended into adjoining states; or, after ten years, after hundreds of thousands of dollars have been expended in the enterprise and the labor of hundreds of men employed in the factory of the company, and the skill of the artisan has added to the excellence of the manufactured article perhaps a hundred times more than the original values of all the patents owned by the company?

Certain it is, it seems to us, until some fraud has been perpetrated by the state taxing officers, until some evidence of oppression is present, until some overvaluation that amounts to confiscation shall be apparent or proved, that the federal court will not interfere with the orderly processes of state tribunals for performing duties admittedly strictly according to the valid statutes of the state.

We are making no assault upon the federal privileges or federal franchises; we are simply trying to have the personal property of a corporation, organized in Indiana, pay the taxes that it justly owes, and which it is unjustly trying to evade. No rights of the federal government are being infringed upon or curtailed; none of its instrumentalities are assailed.

We respectfully submit that the errors assigned by us are valid. All of the pleadings and evidence that the circuit court had before it are before this court.

We ask that the decree of the circuit court of the United States be reversed.

WILLIAM L. TAYLOR,
Attorney-General of Indiana.

JOHN K. RICHARDS,
MERRILL MOORES,
CASSIUS C. HADLEY,
Of Counsel.





No. 30.

Office Supreme Court U. S.
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JAMES H. MCKENNEY,
Clerk

Wm. & Richards, Taylor & Moore
for Appellants.
Supreme Court of the United States.

OCTOBER TERM, 1899.
Filed Jan. 6, 1900.

No. 30.

STERLING R. HOLT ET AL., APPELLANTS,

vs.

THE INDIANA MANUFACTURING COMPANY.

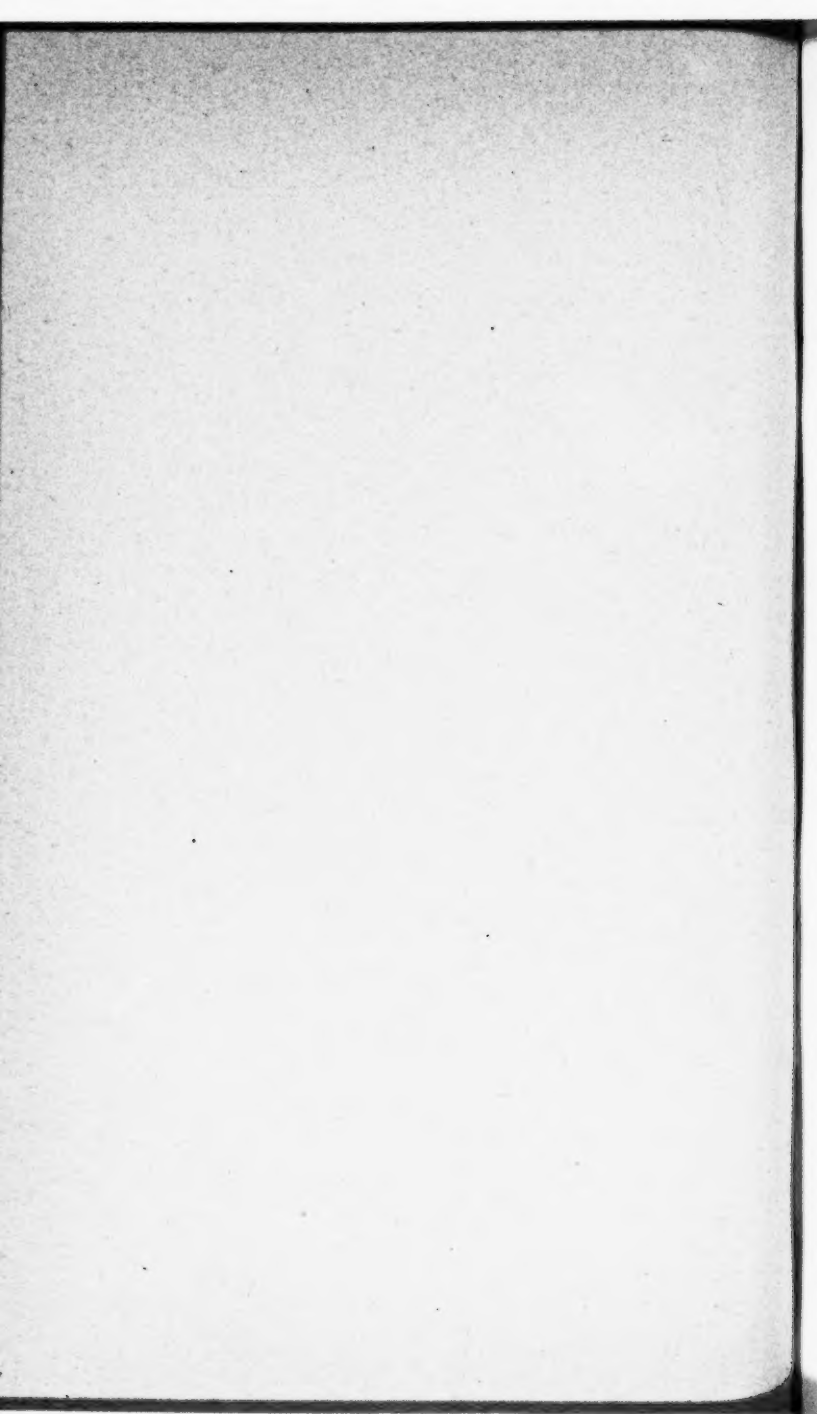
**BRIEF FOR THE APPELLANTS ON THE QUESTION
OF JURISDICTION.**

JOHN K. RICHARDS,
For Appellants.

WILLIAM L. TAYLOR,
Attorney General of Indiana,

MERRILL MOORES,

CASSIUS C. HADLEY,
Of Counsel.



IN THE
Supreme Court of the United States.
OCTOBER TERM, 1899.

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vs.

THE INDIANA MANUFACTURING COMPANY.

**Brief for the Appellants on the Question of
Jurisdiction.**

STATEMENT.

The appellee is a manufacturing corporation of Indiana, organized "to manufacture, use, and sell threshing machines, straw-stackers, and other agricultural implements." On July 13, 1894, it filed its bill in the circuit court of the United States for the district of Indiana, to enjoin certain officers of Marion county, Indiana, from collecting taxes assessed against it for the years 1892, 1893, and 1894. On August 10, 1895, it filed a supplemental bill to enjoin the collection of certain taxes assessed for 1895. The taxes in

dispute for 1892 are \$284.94, and for 1893, \$464.94. The amounts for 1894 and 1895 are not stated, but the taxes in controversy for the four years do not amount to more than \$1,500 or \$1,600. It is conceded they do not amount to \$2,000.

Under the tax laws of Indiana, every manufacturing company incorporated under the laws of that State is required to make out and deliver to the assessor a sworn statement setting forth, among other things, the amount and value of its capital stock, the value of all tangible property, and the difference in value between all tangible property and the capital stock (section 73). This statement is laid before the county board of review, and "said board shall value and assess the capital stock and all franchises and privileges" of such company.

"In all cases where the capital stock of any such corporation exceeds in value that of the tangible property listed for taxation, then such capital stock shall be subject to taxation upon such excess of value."

The Bill.

The bill charged as follows:

In 1892 the company owned and returned tangible property worth \$5,000. Summoned before the board of review, its secretary appeared and testified that the company owned \$5,000 of tangible property and owned certain patents worth \$15,000. The bill asserts that because of the ownership of these patents the board fixed the assessment of the capital stock at \$20,000. The company paid the taxes on \$5,000, amounting to \$95. It disputed the taxes on \$15,000, amounting to \$284.94.

[MEM.—The bill does not state but the record shows that the statement filed returned the market value of the capital stock (\$200,000) at \$20,000 (Rec., p. 32).]

1893. Tangible property returned, \$8,900; value of four patents returned on demand of assessor, \$25,000. Board of review assessed the corporate stock, because of the ownership of the patents, at \$26,000, or \$27,100 in excess of the value of the tangible property. Taxes paid on \$8,900, \$204.55; in dispute, on \$27,100, \$464.94.

[MEM.—The bill does not state but the record shows (page 35) that the company returned its capital stock (\$360,000) at \$36,000, and its total personal property as worth \$33,900, and the difference in value between all tangible property and the capital stock at \$2,100. To reach the \$8,900 of tangible property mentioned in the bill, it is necessary to deduct an indebtedness of \$25,000 from its personal property returned at \$33,900.]

1894. Tangible property returned, \$7,645; value of four patents returned on demand of assessor, \$25,000. Board of review assessed property at \$36,000, or \$28,355 in excess of the value of the tangible property. Taxes for 1894 not due.

[MEM.—The bill does not state but the record shows (page 59) that the company returned its capital stock of \$360,000 as worth \$36,000, or ten per cent., and its total personal property as worth \$32,645, and the difference in value between all tangible property and the capital stock at \$12,904. The \$7,645 of tangible property mentioned in the bill, it is necessary to refer to the assessment-list for 1894 (Rec., pp. 46 to 49). This shows the total credits \$15,491, and the personal property, exclusive of the patents, as \$7,645. These two added together amount to \$23,136, and the difference between this and \$36,000 is \$12,864, not \$12,904, as set forth in the corporate statement (Rec., p. 59).]

The supplemental bill shows (1895) tangible property returned, \$10,137; value of four patents listed by the assessor, \$25,000. Board of review assessed the corporate stock, because of the ownership of the patents, at \$36,000, or \$25,863 in excess of the value of the tangible property. No payment of taxes averred.

[MEM.—The record shows (page 51) that the company made no return of the value of its capital stock, but returned its personal property at \$10,137, and the difference in value between all tangible property and the capital stock at \$39,863. How the difference in value between the tangible property and the capital stock was reached, when no return was made of the value of the capital stock, does not appear. The assessment-list for the same year (Rec., pp. 53 to 56) shows notes and accounts, \$22,891, and other personal property, exclusive of patent rights, \$10,137; total notes, accounts and chattels, \$33,028.]

It is to be observed that the board of review did not attempt to assess the tangible property of the corporation including the patents. In no case did it add to the value of the tangible property as returned, the value of the patent rights as returned. What it did do was to assess the value of the capital stock. The excess in value of this assessment over the tangible property, as returned in 1893, 1894, and 1895, exceeded the value of the patent rights as returned.

The Answer.

The answer admits the making of the assessments charged, but avers the plaintiff "is a corporation doing a lucrative manufacturing business, which is well established and widely known, with a large amount of tangible property and a valuable franchise, exclusive of patent rights;" that the market value of its stock for 1894 was \$360,000, and for 1892 and 1893 at least \$180,000; and that the board of review, in making the assessments for 1892, 1893, and 1894, in no way or manner included or considered the patents, but only the legal taxable property of the company. This answer to the bill is made applicable to the supplemental bill.

ARGUMENT.

I.

The appellee contends, because the law of Indiana requires every person to return, among other things, "all patent rights, describing them and giving the number of each patent and the value of each," that thereby all patent rights are made taxable in Indiana; that in pursuance of this direction the board of review included the value of the patents with the tangible property in assessing the total value of the property of the company, and therefore there was a valuation of patent rights and an attempted taxation of patent rights in violation of the Constitution of the United States.

On the other hand, we contend that the law of Indiana does not require the taxation of patent rights, the return of

such rights and their value being required simply for purposes of information. What the board of review did was to assess the capital stock of this Indiana company, in pursuance of the statute, because its capital stock exceeded in value its tangible property. An increase in the value of capital stock over tangible property owing to the successful prosecution of a manufacturing business, although the business is based in a sense upon certain patents, is properly taxable.

The real contention of this manufacturing corporation, as a careful analysis of the case presented in the record will show, is that because all its capital stock was originally exchanged for patents, the law of Indiana, which applies to all other corporations of Indiana, and requires a valuation of the capital stock whenever it exceeds in value that of the tangible property, does not obtain with respect to it, and that only its tangible property can be assessed and taxed. Whatever amount of capital may have been put into the business, and however much the capital stock may have increased in value by reason of its successful prosecution, this company contends that because its stock was originally exchanged for certain patents its stock is therefore exempt from taxation within the State of Indiana, although it is an Indiana corporation, existing only by the grace of that State. It makes this claim in the present case in the face of the fact that its own secretary testified (Rec., bottom p. 29, top p. 30) that it was expending annually in advertising the business of the company from \$40,000 to \$50,000; that its president testified (see supplemental page 3, at the close of the record) that its capital stock of \$360,000 is worth par;

and that the testimony shows the stock has actually sold (Rec., pp. 28, 29) from 10 per cent. to par.

On the other hand, we contend that the mere fact that the stock of the corporation was originally issued for certain patents does not exempt the capital stock from taxation, where, by reason of the successful prosecution of a manufacturing business, the stock increases in value and exceeds the value of the tangible property. If a patent right be exempt from taxation, it is only so exempt when taxed as a patent right. If a patent right is used in the manufacture of articles, such articles are not exempt, nor is the income from their sale exempt, nor the capital stock to which such income gives value. So if patent rights are sold in part by licenses to others, the income derived from the royalties on such contracts is not exempt, nor is the value of the capital stock created by such royalties. A royalty is simply a contract to pay money at stated intervals in consideration of the use of a patent. If by this use the patented article is manufactured and attached to a machine, neither the patented article nor the machine to which it is attached is exempt from taxation, nor is the royalty which is paid for such use. It is obvious if a promissory note were given for a license to use a patent, the promissory note would not be exempt, neither is the contract to pay royalty exempt. The present company could not do a manufacturing business upon its patents alone. It had to borrow money. With this money it had to build up a business. It had to provide a manufacturing plant, prove the value of its invention, introduce that invention to the public, more particularly the manufacturers of threshers. It expended from \$40,000 to \$50,000

a year in advertising its business. The value which this money and its contracts and its privileges gave to the stock is certainly taxable.

In assessing the value of the capital stock of this Indiana corporation, the county board of review exercised discretion and judgment. Its finding will not be interfered with unless it is shown that it acted fraudulently or followed an illegal rule. Taxing boards are not restricted to evidence before them, although in this case it can be shown that the evidence submitted amply supported the valuation made. They have a right to act upon their own knowledge of the matter before them. The valuation of the property is more or less a matter of opinion, and a court will not substitute its opinion for that of a board which is on the ground, with special opportunities for inside information.

The question as to whether an illegal item was included in the valuation is a question of fact upon which the court will not enter if, in view of the case presented, it is not clear that the taxing board acted illegally by including non-taxable property. In the long line of cases assessing the property of railroad, telegraph, and express companies, by taking a proportionate part of their capital stock as a guide, it was insisted on behalf of these corporations that property, franchises, and patents located outside of the taxing State and in themselves not taxable were included in the valuation made. But this court refused to review the findings of the taxing boards where it did not appear that there was any gross injustice done the corporation. The last of the telegraph cases is *Western Union Telegraph Company vs. Taggart*, 163 U. S., 1, in which Mr. Justice GRAY delivered the opinion of the court.

On page 18 the court holds that the statute under consideration was valid, although "nothing is in terms directed to be deducted from the valuation, either for the value of its franchises from the United States, or for the value of its real estate or machinery situated and taxed in other States."

On page 28, referring to the value of the real and personal property outside of Indiana and of the franchises granted by the United States and other countries, it is said: "The tax commissioners had the right and the duty, in estimating the value of the plaintiff's property in Indiana, to take into consideration those franchises and the other elements mentioned in this paragraph of the bill."

Touching the allegation that the value of the stock included a consideration of the company's franchises, its contracts with other companies, its past and future earnings, the skill and enterprise of its managers, and its property outside of Indiana, and the further allegation that the valuation made included values which are no part of the true cash value of the property in Indiana, Mr. Justice Gray, speaking for the court, says (page 30): "This is but equivalent to an assertion that the decision of the tax commissioners upon the question of fact committed by the statute to their determination was erroneous," and he quotes from the decision in the Backus case to the effect that the finding of the taxing board creates something more than a mere presumption of fact.

II.

I have gone somewhat into detail in presenting this case, not in order to argue it upon its merits, but to show its real character, for upon that depends whether the circuit court did or did not have original jurisdiction. The suit is one to enjoin the collection of taxes alleged to have been assessed in violation of certain guarantees of the Constitution of the United States. In the bill it was alleged (Rec., bottom page 7) that this suit was one "to resist the deprivation, under color of a law of the State of Indiana, of a right secured by the Constitution and laws of the United States," and, further, that it is "a suit arising under the patent laws of the United States." This averment was for the purpose of bringing the suit within the provisions of the ninth and sixteenth clauses of section 629 of the Revised Statutes, the ninth clause giving the circuit court jurisdiction, irrespective of amount, of all suits at law or in equity arising under the patent laws of the United States, and the sixteenth giving that court jurisdiction of all suits authorized by law to be brought by any person to resist the deprivation, under color of any law, statute, ordinance, regulation, custom, or usage of any State, of any right, privilege, or immunity secured by the Constitution of the United States, or of any right secured by any law providing for equal rights of citizens of the United States, or of all persons within the jurisdiction of the United States. The latter clause obviously has no application to this suit. It relates only to certain civil rights (*Illinois vs. R. R. Co.*, 6 Biss., 107). The first (ninth) was held inapplicable by the circuit court of appeals in its decision in this case (80 Fed. Rep., 1, 3).

Judge JENKINS delivered the opinion of the court and says (p. 3):

While it is true that the bill asserts jurisdiction in the court below in part upon the ground that it is a suit arising under the patent laws of the United States, it cannot be said that in any just sense this is a case arising under the patent laws of the United States, so as to confer jurisdiction by appeal upon this court, and in respect to which its decision may be final. It is true that the wrong complained of had for its subject-matter the taxation of rights secured by letters patent issued by the United States under its patent laws. It is not correct, however, to say that therefore a suit to prevent such taxation arises under the patent laws of the United States (*Brown vs. Shannon*, 20 How., 55; *Hartell vs. Tilghman*, 99 U. S., 547; *Albright vs. Teas*, 106 U. S., 613; *Manufacturing Co. vs. Hyatt*, 125 U. S., 46; *U. S. vs. Palmer*, 128 U. S., 262, 269; *Marsh vs. Nichols*, 140 U. S., 344; *Wade vs. Lawder* (decided March 1, 1897), 17 Sup. Ct., 425).

The question at issue is whether the statutes of the State of Indiana authorizing such taxation are repugnant to the Constitution of the United States. That is not a question arising under the patent laws of the United States. The jurisdiction of the court below, there being no diversity of citizenship of the parties, rested and could rest only upon the ground that the constitutional rights of the complainant below were infringed by the laws of the State of Indiana, which were repugnant to and in contravention of the Constitution of the United States.

Now, the appellee urges in addition that there was an attempt by the taxing officers to deprive it of its property without due process of law, and to deny to it the equal protection of the laws (Brief, pp. 8, 9). These additional grounds urged under the fourteenth amendment do not change the situation nor relieve the appellee of the necessity of showing that the jurisdictional amount was in contro-

versy. In practically every suit to enjoin the collection of a tax alleged to be illegal the plaintiff submits that it is being deprived of its property without due process of law and is being denied the equal protection of the law.

Whatever be the ground upon which it is sought to enjoin the collection of the tax levied by the State, it must be shown that the amount of the tax in controversy is sufficient to give the court jurisdiction.

In *Linehan Railway Transfer Co. v. Pendergrass*, 70 Fed. Rep., 1, where the tax amounted to less than \$2,000, but the ferry-boat upon which it was assessed and levied to more than \$2,000, a demurrer to the bill was sustained because the amount in controversy was not sufficient to give the court jurisdiction.

In *Fishback vs. Western Union Telegraph Co.* 161 U. S., 96, where there was an attempt to enjoin the collection of separate county taxes by separate county officers in one suit, it was held that the separate amounts, each less than \$2,000, could not be lumped in order to secure jurisdiction.

In *Citizens' Bank vs. Cannon*, 164 U. S., 319, a suit by a bank to enjoin the collection of taxes on the ground that its charter exempted it from such taxation, the court held that the taxes for a series of years could not be aggregated in order to reach the jurisdictional amount.

The court, speaking by Mr. Justice SHIRAS, said, page 322 :

The purpose of the bill is to restrain certain tax assessors and tax collectors from collecting taxes for specific years, and, if the amount of such taxes does not confer jurisdiction, it is, from the nature of things, impossible for a court to foresee what, if any, taxes may be assessed in the future.

III.

But it is insisted that this is a suit arising under the patent laws of the United States, and therefore no jurisdictional amount is required to be shown. I have already quoted the language of the circuit court of appeals in this case (70 Fed. Rep., 1), holding that this is not a suit arising under the patent laws of the United States, and citing numerous authorities in support of that conclusion. The characteristics of a suit arising under the patent laws are referred to in the opinion of the court, delivered by Mr. Chief Justice FULLER, in *United States vs. American Bell Telephone Co.*, 159 U. S., 548, 553 :

Now, actions at law for infringement, and suits in equity for infringement, for interference and to obtain patents, are suits which clearly arise under the patent laws, being brought for the purpose of vindicating rights created by those laws, and coming strictly within the avowed purpose of the act, to relieve this court of that burden of litigation which operated to impede the disposition of cases of peculiar gravity and general importance.

The court accordingly held that a suit to cancel the patent of the Bell Telephone Company was not a suit arising under the patent laws, although the result of that suit might be to deprive the owner of the patent of all franchises and privileges granted in pursuance of the patent laws.

So, in *Marsh vs. Nichols, Shepard & Co.*, 140 U. S., 344, it was held that a bill in equity in a State court to enforce the specific performance of a contract for the sale and transfer of a patent was not a suit arising under the patent laws

of the United States. Said the court, speaking by Mr. Chief Justice FULLER, bottom page 354:

In this case the State court did not decide any question arising under the patent laws, nor did the judgment require, to sustain it, any such decision. Neither the validity of the patent, nor its construction, nor the patentability of the device was brought under consideration, even collaterally.

In the language of Mr. Chief Justice Taney, *Wilson vs. Sandford* (10 How., 99, 101), the dispute "does not arise under any act of Congress, nor does the decision depend upon the construction of any law in relation to patents. It arises out of the contract stated in the bill, and there is no act of Congress providing for or regulating contracts of this kind. The rights of the parties depend altogether upon common law and equity principles."

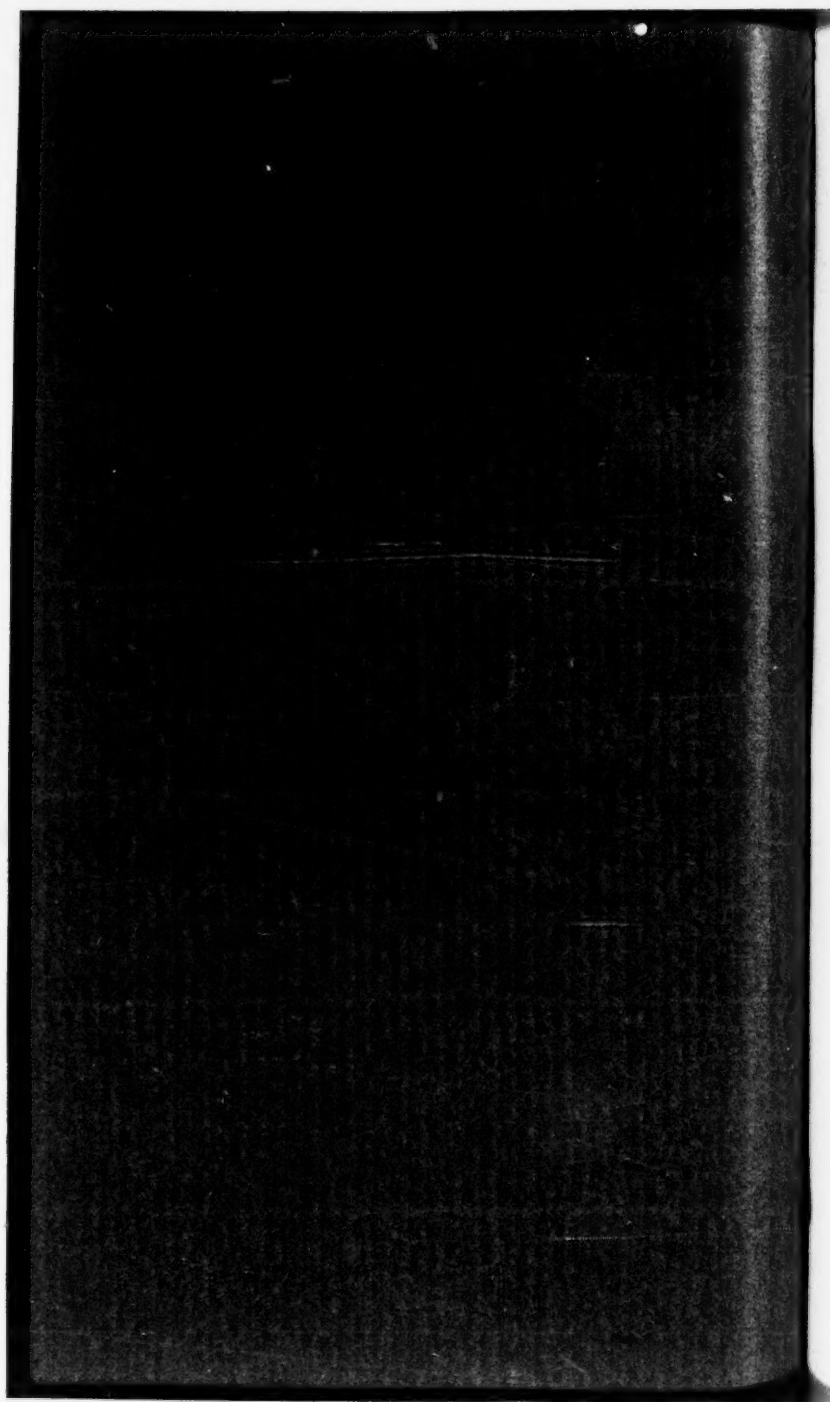
So, in the present case. The court is not required to pass upon any question arising under the patent laws of the United States. Neither the validity of the patents held by this Indiana corporation, nor their construction, nor the patentability of the device, is under consideration. No construction by the court of any law in relation to patents is required. The only laws involved and which require construction are the laws of Indiana relating to taxation. The constitutionality of these laws and the validity of the action of the taxing officers under them, when tested by the guarantees of the Constitution of the United States, are involved, and that is all. The appellee claims that under the Constitution of the United States patents are exempt from taxation. The question whether this is so is one arising under the Constitution and not under any patent laws. Conceding that the contention of the appellee is correct, and that patent rights are exempt from taxation, then

the question is, Was there an assessment of patent rights in this case? Does the determination of this require a construction of the patent laws of the United States? Is this a question arising under the patent laws? Certainly not. The question is one arising under the tax laws of Indiana and involves their construction and the action of the taxing officers under them.

The reiterated assertions of counsel for the appellee respecting the importance of the questions involved only go to support our contention that the case is not one arising under the patent laws of the United States, of which the circuit court of appeals would have final jurisdiction, but is a case involving the construction and application of the Constitution of the United States, which may be taken from the circuit court direct to the Supreme Court.

JOHN K. RICHARDS,
For Appellants.

WILLIAM L. TAYLOR,
Attorney General of Indiana,
MERRILL MOORES,
CASSIUS C. HADLEY,
Of Counsel.



IN THE
SUPREME COURT OF THE UNITED STATES.

ON APPEAL FROM THE U. S. CIRCUIT COURT FOR THE
DISTRICT OF INDIANA.

STERLING R. HOLT,
JOEL A. BAKER,
THOMAS TAGGART,
GEORGE WOLF,
WILLIAM A. BELL, and
CHARLES H. STUCKMEYER,

Appellants,

vs.

THE INDIANA MANUFACTURING
COMPANY,

Appellee.

No. 500.

October Term,

1897.

MOTION TO DISMISS THE APPEAL FOR WANT OF
JURISDICTION OF THE CASE.

Now comes the appellee in the above-entitled cause, by its solicitor, and moves this Honorable Court that this appeal be dismissed for want of jurisdiction of the case, for the reason that the appeal was not taken during the time prescribed by the statute within which appeals to this Court must be taken in such cases.

Respectfully submitted,

CHESTER BRADFORD,

Solicitor for Appellee.



HON. WM. A. KETCHAM,

Solicitor for Appellants.

Please take notice that on Monday, January 10th, 1898, I shall submit the foregoing motion to the Supreme Court of the United States, on the accompanying Brief.

Very respectfully,

CHESTER BRADFORD,

Solicitor for Appellee.

Service of the foregoing motion accepted, and receipt of a copy thereof, and of the accompanying brief supporting the same, acknowledged, at Indianapolis, Indiana, this 4th day of December, 1897.

W. A. KETCHAM,

Solicitor for Appellants.



IN THE
SUPREME COURT OF THE UNITED STATES.

ON APPEAL FROM THE U. S. CIRCUIT COURT FOR THE
DISTRICT OF INDIANA.

STERLING R. HOLT, *et al.*,

Appellants,

vs.

THE INDIANA MANUFACTURING
COMPANY,

Appellee.

No. 500.

October Term,
1897.

BRIEF FOR APPELLEE ON MOTION TO
DISMISS.

May it please the Court:

The judgment and decree of the Circuit Court of the United States for the District of Indiana appealed from, was made and entered March 3, 1896, as appears on pages 16 and 17 of the printed transcript of record.

The appeal was prayed September 16, 1897, and the same was perfected, by the taking and approval of the appeal bond, September 30, 1897, as appears on pages 17 and 18 of the printed transcript of record. No steps were therefore taken in the matter

of said appeal until more than one year and six months after the date of the final decree in the Circuit Court.

The law respecting appeals of this character is found in the Act of March 3, 1891, generally known as the "Evarts Act", and those portions of said Act which are believed to have a bearing upon the present matter, read as follows:

SEC. 5. That appeals or writs of error may be taken from the district courts or from the existing circuit courts direct to the Supreme Court in the following cases:

In any case that involves the construction or application of the Constitution of the United States.

In any case in which the constitution or law of a State is claimed to be in contravention of the Constitution of the United States.

SEC. 6. That the circuit court of appeals established by this act shall exercise appellate jurisdiction to review by appeal or by writ of error final decision in the district court and the existing circuit courts in all cases other than those provided for in the preceding section of this act, unless otherwise provided by law.

In all cases not hereinbefore, in this section, made final there shall be of right an appeal or writ of error or review of the case by the Supreme Court of the United States where the matter in controversy shall exceed one thousand dollars besides costs.

But no such appeal shall be taken or writ of error sued out unless within one year after the entry of the

order, judgment, or decree sought to be reviewed.

SEC. 14. And all acts and parts of acts relating to appeals or writs of error inconsistent with the provisions for review by appeals or writs of error in the preceding sections five and six of this act are hereby repealed.

This Court undoubtedly has jurisdiction of the question involved in this case, but it is respectfully submitted that it has no jurisdiction of the present case itself, for the reason that the appeal was not taken within the statutory time.

Appellee is of the opinion that this Act of March 3, 1891, in and by the provisions above quoted, repeals and supersedes, at least in so far as it governs the time within which an appeal may be taken is concerned, Sec. 1008 Revised Statutes; and that, under the law as it now stands, no appeal can lawfully be taken to this Court, "unless within one year after the entry of the order, judgment, or decree sought to be reviewed".

It may be said, by way of argument, that it seems to have been the policy of Congress in passing the Act in question, to shorten the times within which appeals might be taken, and so speed the final disposition of litigation in Federal Courts. In the same Act the time for taking appeals to the Circuit Courts of Appeals is fixed at six months, whereas (under Sec. 635 R. S.) appeals from District Courts to Circuit Courts could formerly be taken within one year. It would therefore seem to have been the

intention to cut down the time within which appeals might be taken one-half in all cases—from two years to one year in cases appealable to the Supreme Court, and from one year to six months in cases appealable from the inferior to the intermediate Courts.

It may additionally be said that no reason can be seen why two years should be allowed for the taking of appeals to this Court from District and Circuit Courts, when only one year is allowed for the taking of appeals to this Court from the Circuit Courts of Appeals, which are the Courts of greater dignity and consequence. To give the law any other construction than that herein contended for, would therefore seem to involve an inconsistency, as well as a departure from what appellee believes to be its plain letter.

For the reasons above given, it is respectfully submitted that the present appeal ought to be dismissed.

CHESTER BRADFORD,
Counsel for Appellee.

INDIANAPOLIS, IND., Dec. 3, 1897.

IN THE
SUPREME COURT OF THE UNITED STATES.

On Appeal from the U. S. Circuit Court for the District of Indiana.

STERLING R. HOLT, *et al.*,
vs.

THE INDIANA MANUFACTURING
COMPANY.

No. 500,
OCTOBER TERM,
1897.

REPLY TO APPELLANTS' BRIEF IN OPPOSITION TO
APPELLEE'S MOTION TO DISMISS.

May it please the Court:

Last evening, (January 4, 1898,) I was furnished with a copy of what was then said to be appellants' brief in opposition to my motion to dismiss the appeal herein for want of jurisdiction of the case. I am now, late this evening, served with an additional and much more voluminous brief which I suppose is intended to withdraw and supersede the former one. It is impossible in the time at my command, to review this fully; but I will endeavor to so add to what I had said in reply to the first, as to constitute a short reply to what seems to be the salient points of the brief last served.

Upon my theory of the present proceeding, all that matter which relates to questions concerning the merits of the case is wholly immaterial, and will be disregarded. I am unable to see how the question of whether or not appellee was properly taxed can have any possible bearing upon the question of whether or not the appeal was taken in time. Nor, in my opinion, do appellants' help their case in its present aspect any by attempting to discredit the judgment and decree of the United States Circuit Court for the District of Indiana. A list of the kinds of cases appealable first to the Circuit Court of Appeals and thence to this Court seems equally impertinent.

Coming to the discussion of the questions properly in issue here, I desire to reiterate and emphasize my belief that the whole act of March 3, 1891, from and including its title to the end thereof, is to be considered together, and all the sections and parts of sections relating to the question at issue are to be given their due and proper force and signification, and that the decision must turn, whether for or against my contention, not upon isolated words or short phrases, but upon the whole law so far as it relates to the question raised.

I insist that appellants' counsels' statement that if Sec. 1008 R. S. is repealed by this act "it is a repeal by implication" is incorrect; and that, therefore, the authorities cited to the effect that repeals by implication are not favored, are not applicable to the case at bar.

I insist that in and by Sec. 14 of the said act of March 3, 1891, all acts and parts of acts inconsistent with the provisions contained in Secs. 5 and 6 relating to appeals or writs of error, are expressly and in terms repealed. And Sec. 1008 R. S. which gives two years for an appeal to be taken to this Court, is inconsistent with the provisions of this act which reduce the time to one year.

Nor is there anything inconsistent (supposing that to be the rule) in allowing two years for an appeal from or writ of error to the Supreme Court of a State, where cases from such Courts are reviewable here. The matters which come from State Supreme Courts are usually matters of considerable magnitude, and frequently very complex; and they come much less frequently than cases from inferior Federal Courts. Possibly, also, State Court practitioners should be given more time within which to consider federal questions, than practitioners whose business is principally in the Federal Courts. It certainly involves no inconsistency if the practice be differently regulated. Whether it is or not, however, is not presented in the present proceeding; and I have no disposition to argue a question not now before the Court.

Proceeding now to a little more particular discussion of the questions raised: The title of the "Evarts" Act (Supplement to R. S., Chap. 517, p. 901) reads:

An act to establish Circuit Courts of Appeals, and to *define and regulate in certain cases the jurisdiction of the Courts of the United States*, and for other purposes.

The act in question was ~~not~~, therefore, exclusively for the purpose of creating United States Circuit Courts of Appeals, but in a large measure was amendatory of the law respecting the jurisdiction of United States Courts generally, while its title is broad enough to cover these and many "other purposes".

In and by Sec. 5 it clearly defines in what cases this Court shall have jurisdiction of appeals direct from District Courts and Circuit Courts, as set out in my original brief.

Attention is also asked to the following Section not before quoted:

Sec. 4. That no appeal, whether by writ of error or otherwise, shall hereafter be taken or allowed from any district court to the existing circuit courts, and no appellate jurisdiction shall hereafter be exercised or allowed by said existing circuit courts,

But all appeals by writ of error [or] otherwise, from said district courts shall *only* be subject to review in the Supreme Court of the United States or in the circuit court of appeals hereby established, *as is hereinafter provided*, and the review, by appeal, by writ of error, or otherwise, from the existing circuit courts shall be had *only* in the Supreme Court of the United States or in the circuit courts of appeals hereby established *according to the provisions of this act* regulating the same.

Why should Congress have been particular to say "*according to the provisions of this act*", if it

had been intended that appeals from Circuit Courts to this Court might be taken under the provisions of some other act, or statute?

And why, as appears in the quotation from Sec. 6 of said act in our original brief, should Congress say. "In **all** cases", etc., and "But **no** such appeal shall be taken or writ of error sued out unless within one year after the entry of the order, judgment, or decree sought to be reviewed", if it had been intended that appeals might in some cases be taken within two years?

It is believed that our theory of the policy of Congress in enacting this law is also strengthened by the provisions of Sec. 10, wherein it is provided that cases after review and determination in this Court shall take exactly the same course when they come from the Circuit Courts of Appeals as when they come from the District Courts or existing Circuit Courts.

In fact, the whole policy of the law seems to be to the effect that *all* appeals from lower Federal Courts to this Court should be taken in the same time, under the same rules, be determined in the same way, and disposed of in like manner;—and this seems right and reasonable.

Indeed, there can be no argument based upon reason why a litigant should be given two years within which to come to this Court from a Circuit or a District Court, when he is given only one year

within which to come from a Circuit Court of Appeals.

But, to repeat: The law says "*In all cases not hereinbefore in this section made final*". Not as appellants would seem to contend, "*In all cases in which appellate jurisdiction is primarily in the Circuit Court of Appeals*", and not hereinbefore in this section made final". And not "*In some cases not herei . before in this section made final*".

And the law further reads "**no** such appeal"; not "no appeal from a circuit court of appeals", and not "some such appeals".

Indeed, the language used seems entirely plain and clear, and hardly needs definition.

Appellants' counsel call attention to Desty's Federal Procedure, Eighth Edition, Sec. 541, p. 879; and to Foster's Federal Practice, Second Edition, Sec. 483, pp. 1036-7.

Sec. 541 of DESTY is an *exact* reprint of Sec. 1008, p. 573, of the seventh (1889) edition of the same work, with the addition of a single authority, (*Chapman v. Barney*, 129 U. S. 677), to the note; and this single added authority is a decision rendered in 1889, two years before the act in question was passed.

It is fair to say, therefore, that Mr. Desty shows no evidence in his work of having considered the question at issue.

FOSTER, (p. 1036), somewhat tentatively, says:

It *seems* that this limitation applies only to writs of error to and appeals from the decisions of the Circuit Courts of Appeals.

He cites no authority, and indulges in no reasoning to support this position. Under these circumstances such a mere halting expression of opinion can not be considered of much force; and certainly it can not be contended that it should govern this Court in its disposition of the question.

It is respectfully submitted that appellant's assertion that the act in question:

applies only to cases of appeal or writs of error to the Supreme Court from final decrees or judgments in the Circuit Court of Appeals;

is not supported by any proper interpretation of that act, or by sound reason.

The law in question, like others, should be construed as a whole.

So construed, we submit that it forms a complete and harmonious system in respect to the matters therein comprehended. Under the system thus established this appeal was not taken in time.

Sec. 14 of this act does not alone repeal Sec. 691 R. S. After doing this it proceeds:

And all acts and parts of acts relating to appeals . . . inconsistent with the provisions for review by appeals . . . in the preceding sections five and six of this act are hereby repealed.

Finally, this appeal is taken under the authority of the very act in question. Is it not more congruous

to hold that the time and the conditions are governed by the same act, than it is to strain language in order to have the time governed by an old law which it seems more consistent to say was superseded by the act in question?

Appellants seem to complain, and the tenor of the concluding portion of the brief is that they are ill used, because, as is expressed in their brief, after they have come to this Court, they are "met at the threshold with the objection that its [their] appeal is not timely".

In reply to this, I have only to say that I conceive that laws were enacted to be enforced; and if the construction which I think should be placed upon this law is the correct one, then the decision should be in our favor. It is no more a hardship to deprive the slow suitor of his appellate remedy than it is to deprive the slow creditor of the monetary relief to which he otherwise would be entitled. Indeed, not so much; for the presumption is in favor of the correctness of the findings of the lower Court. "The law favors the diligent". As I see it, appellee has been diligent and the appellants have not. If this is correct, why should they not take the consequences?

I will not consume the time of the Court in further replying to appellants' hint that they would like to be excused for their delay in taking this appeal, because they frittered away their time in abortive

appeal proceedings before a Court which had no jurisdiction of the subject. Appellants had numerous counsel (including the Attorney-General), and ample means: They are in no position to ask an advantage because of their own mistakes.

I trust your Honors will pardon such crudities of expression as appear herein, because of the needful great haste with which it has had to be prepared. But the question presented seems so clear to my mind that a very elaborate or highly finished presentation can, perhaps, be dispensed with.

It appears, over and over again, that it was in the mind of the legislators, in passing the act in question, to establish a *system* of appeals, not for Circuit Courts of Appeals alone, but for *all* United States Courts. If the act is in any sense ambiguous, which I do not think it is, the evident intention of the legislators should govern in construing it.

Respectfully submitted,

CHESTER BRADFORD,

Solicitor for Appellee.

INDIANAPOLIS, IND., January 5, 1898.



No. 30.

DEC 15 1899

JAMES H. MCKENNEY,
Clerk.

Brief of Bradford for Appellee
IN THIS

Supreme Court of the United States.

Filed Dec. 15, 1899.

On Appeal from the U. S. Circuit Court for the District of Indiana.

STERLING R. HOLT,
JOEL A. BAKER,
THOMAS TAGGART,
GEORGE WOLF,
WILLIAM A. BELL, and
CHARLES H. STUCKMEYER,

Appellants,

vs.

THE INDIANA MANUFACTURING
COMPANY,

Appellee.

No. 30.

IN EQUITY.

October Term,
1899.

BRIEF FOR APPELLEE.

CHESTER BRADFORD,

For Appellee.

1233-1236 Stevenson Building,

Indianapolis, Indiana.

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IN THE
Supreme Court of the United States.

On Appeal from the U. S. Circuit Court for the District of Indiana.

STERLING R. HOLT,
JOEL A. BAKER,
THOMAS TAGGART,
GEORGE WOLF,
WILLIAM A. BELL, and
CHARLES H. STUCKMEYER,
Appellants, (Defendants below),
vs.
THE INDIANA MANUFACTURING
COMPANY,
Appellee, (Complainant below).

No. 30.
IN EQUITY.
October Term,
1899.

BRIEF FOR APPELLEE.

May it Please the Court:

In bringing this suit, complainant, in its bill, in the clearest possible terms, waived oath to answer. Transcript, p. 8, fourth line.

By the amendment to the forty-first Equity Rule, adopted by this Court at its December Term in 1871, it was provided:

If the complainant, in his bill, shall waive an answer under oath . . . the answer of the defendant, though under oath, .

. . . shall not be evidence in his favor, unless the cause be set down for hearing on bill and answer only.

Under this rule, therefore, the defendants' answer can not be made to take the place of evidence in their favor.

Defendants submitted no evidence whatever.

The matter is therefore to be heard and decided upon the pleadings, and evidence taken on behalf of appellee.

Issues are determined by the pleadings, and these issues can not be changed by argument, illustration, improper evidence, or inapplicable authorities.

Particular attention is therefore invited to the allegations of the bill and of the supplemental bill, and to the inadequacy of the answer to meet those allegations. Attention is further called to the affirmative character of most of the few allegations of the answer, and to the fact that no evidence was tendered in support thereof.

During the progress of this suit, at various stages, the defense has been in charge of four different counsel, each of whom has seemed to have widely divergent views concerning the proper basis of defense from any of the others.

Appellants' brief (a manuscript copy of which was only furnished appellee's counsel late on the afternoon of Wednesday, September 27) was prepared by the present Attorney-General during the preceding nine or ten months, prior to which time he had been furnished copies of appellee's counsel's former briefs. It may therefore be considered as but natural that many of the contentions heretofore made in the case should be abandoned upon this final presentation. The brief, however, to a very large extent, is based upon a complete shifting of position from any heretofore taken by the defendants-

appellants, and it seems somewhat late, in appellee's counsel's view, to here raise such matters for the first time. In the brief time at counsel's command, it seems impossible to adequately answer the matters thus raised, in detail, and counsel for appellee must therefore beg the indulgence of the Court if in his answer to much of appellants' brief he deals with the questions in what may be thought to be too general terms.

So much by way of prefatory remarks. We will now proceed to discuss the questions which we believe to be properly involved in the case before us.

STATEMENT OF THE CASE.

Appellants' counsel's apprehension of the matters involved in this suit appears so radically different from what appellee's counsel believes to be properly involved, that an independent statement of the case seems necessary.

This suit was brought under the ninth and sixteenth clauses of Sec. 629, Rev. Stat. U. S., defining the jurisdiction of the Circuit Courts of the United States, and which, respectively, provide that such Courts shall have jurisdiction "Of all suits at law or in equity arising under the patent or copyright laws of the United States," and of suits "to redress the deprivation, under color of any law, statute, ordinance, regulation, custom, or usage of any state, of any right, privilege, or immunity, secured by the Constitution of the United States."

The latter clause was relied on, as it was not thought that any question could probably arise under the former, and in a sense this proved to be true. No questions were raised by either side presenting any issue under the laws usually called "patent laws" in the somewhat restricted sense in which that term is usually used. In a broader sense, the whole subject of United States pat-

ents being under federal law, it may well enough be considered that such laws are involved.

The inception of taxation in the State of Indiana is a tax return, or assessment list, or "schedule", which is made to or secured by the Township Assessor. All subsequent proceedings are (and must be) based largely, if not wholly, upon this return.

The acts of certain persons, the appellants herein, holding the offices of Assessor of Center Township, Marion County, Indiana; and of Assessor, Auditor and Treasurer, and the three last named of whom, together with two others, constitute the "Board of Review" of said County, are called in question in this proceeding, and also the *constitutionality* of certain statutes of the State of Indiana, under which the persons named pretended to be acting as such officers.

The bill of complaint alleges, in effect, that said persons, acting under the supposed authority of certain statutes of the State of Indiana, are attempting by virtue of their official position to tax certain "patent rights", or Letters Patent of the United States, owned by appellee.

The statutes of the State of Indiana respecting taxation are comprised in the Act of the General Assembly approved March 6, 1891, which, by Sec. 50, requires that:

Every person required by this act to make or deliver such statement or schedule shall set forth an account of property held or owned by him, as follows:

Seventh. All **PATENT RIGHTS** describing them, and giving the number of each patent, and the value of each.

In Sec. 53 of the same Act we find a form of "Schedule" prescribed, in which occurs this item:

"25 | Number of **PATENT RIGHTS** and value... | .. | ..."

The State of Indiana, therefore, in and by its statutes, attempts to tax "patent rights"; and thus THE REAL QUESTION INVOLVED IN THIS CASE IS THE CONSTITUTIONALITY OF THESE PROVISIONS OF THE STATUTES IN QUESTION.

Plainly stated, appellee's contention is that *a State can have no control over a franchise granted by the government of the United States*, except such as may result from the exercise of that reasonable police power which is for "the protection of the lives, the health, and the property of the community". And that no other conditions or restrictions whatever can be imposed upon such a franchise, or the exercise thereof, except such as are prescribed by authority of the United States duly exercised in that behalf.

More briefly, that State Statutes prescribing the taxation of Letters Patent, are in conflict with the laws and paramount sovereignty of the United States, and are therefore **VOID**.

THE ISSUES, AS MADE BY THE PLEADINGS.

Before proceeding with the general discussion, it is, perhaps, of some importance to determine what the issues are, as made by the pleadings and applicable evidence, excluding hypotheses and suppositions.

The bill of complaint and supplemental bill in this case are quite elaborate, covering together about twelve printed pages of the record. Let us note for a moment the issues tendered thereby.

Recitals of the taxation are completely and particularly made. The proofs are identical with these allegations of the bill.

Allegations are made (transcript p. 3) that the assessor *demand*ed the information respecting the Letters Patent owned by appellee, and that the demand was

submitted to. This was not a voluntary return. The testimony (Q. 66, p. 28), supports this allegation.

It is alleged (transcript, p. 5) "that the valuation placed upon its stock was because of the ownership of said Letters Patent and not otherwise". Appellee contends that this clearly appears in evidence.

The allegations is (transcript, p. 6) that the moneys are collected under the laws of the State of Indiana for the benefit of the State, of Marion County, and of the City of Indianapolis. Also irrecoverable. The proof (stipulation, transcript, p. 24) corresponds with the allegation.

The allegation is that the claims of taxation are made "under the provisions of the statutes of the State of Indiana", (transcript, p. 7, near top) and in and by the stipulation made before the closing of the case complainant gave notice that it would "produce and use at the hearing the statutes of the State of Indiana bearing upon the question of taxation of patents or patent-rights"; and in and by its brief it did produce and quote the pertinent portions of such statutes—and does the same here.

It is alleged that the wrongful taxation made a cloud upon the title of appellee's property which "a court of equity has full power and jurisdiction to remove by its decree". That has not been controverted. Can it be doubted?

It is alleged (p. 7) that appellee was engaged in the business of manufacturing, that its tangible property consisted of matters necessary thereto; that if such property should be seized and sold under the unlawful proceedings complained of "that its said business will be destroyed and ruined, and great and irreparable damage will result to your orator". Nothing to the contrary is alleged or shown.

It alleges (p. 8) that it could have "no adequate relief except in this court." It has never before been pretended that this was incorrect.

The prayer of the bill asked (p. 8) that it should be decreed "that the assessment and valuation for taxation of the Letters Patent of your orator made *directly* or *indirectly* by said assessor and Board of Review is inequitable, unjust, unlawful, and wholly void".

In and by the supplemental bill (p. 14) it is alleged: that whatever value the stock of said company might possess it possessed solely by reason and on account of its ownership of Letters Patent of the United States, and that except for such ownership such stock would have no value whatever, and that said stock was as a matter of fact all issued in payment for such Letters Patent and not otherwise, and that the stock of your orator except for the ownership of such Letters Patent would be utterly valueless.

The evidence corresponds exactly to this.

See "1895 Tax Statement" (transcript, p. 51), where, in answer to the question, "If no market value, then the actual value" it is said:

The entire capital stock was issued in exchange for certain patent-rights or Letters Patent and has no value except such as it derives from such patent-rights. The tangible property of the corporation is not sufficient to meet its indebtedness.

See also the evidence quoted on pp. 34 and 35 *post* of this brief.

The foregoing, in short, are the contentions which appellants were called upon to meet.

Appellants' *answer* starts out by admitting the correctness of the allegations respecting taxation.

They then say "that the plaintiff is a corporation doing a lucrative manufacturing business, which is well established and widely known, with a large amount of

tangible property, and a *valuable franchise*, exclusive of patent rights."

It then asserts that the *value* of plaintiff's *stock* was a large sum.

The defendants then said that "the patents, if any plaintiff had, were in no way or manner included or considered and that the board in making said assessments considered only the legally taxable property and no other."

These are all the allegations contained in the answer, and most of these are either *affirmative* allegations, not responsive to any allegations of the bill, and which ought to be established by *independent proof* if at all, (Story's Eq. Pl. Sec. 849 *a.*), or are mere conclusions.

It is sufficient to say that the evidence does *not* show that plaintiff had "a large amount of tangible property" or "a *valuable franchise* exclusive of patent rights."

In the evidence, the value of the stock *varies with the opinions of the witnesses*, as it must necessarily do, being based upon "patent rights."

Appellants have submitted no evidence whatever to show that the patents "were in no way or manner included or considered" in making the assessments,—merely their *ex parte*, unsupported and extra-judicial oaths to their answer—oaths not called for by the law or the practice where, as in this case, oath to answer is waived.

As to the remainder of the allegations of complainant's bill, the answer contains no reply whatever. In short, it is submitted, the answer but feebly responds to most of the material allegations of the bill, and by its silence as to many of them substantially confesses the truth of the same.

And, let it not be forgotten, *answer under oath having been waived*, that, under Equity Rule 41, the answer itself is not evidence for appellants.

FEDERAL FRANCHISES NOT TAXABLE.

"THE POWERS OF THE GENERAL GOVERNMENT, AND OF THE STATE, ALTHOUGH BOTH EXIST AND ARE EXERCISED WITHIN THE SAME TERRITORIAL LIMITS, ARE YET SEPARATE AND DISTINCT SOVEREIGNTIES, ACTING SEPARATELY AND INDEPENDENTLY OF EACH OTHER, WITHIN THEIR RESPECTIVE SPHERES."

So said Mr. Chief Justice TANEY in *Ableman v. Booth*, 21 How. 506. (16 L. Ed. 169).

Section 8 of Article I of the Constitution of the United States, enumerating the powers of Congress, includes that:

To promote the progress of science and useful arts, by securing for limited times to authors and inventors the *exclusive* right to their respective writings and discoveries.

In pursuance of the authority thus given, Congress has enacted laws under which Letters Patent for new inventions are granted to inventors or their assignees:— and that section pertinent to the present inquiry reads in part as follows:

Sec. 4884. Every patent shall contain . . .
a grant to the patentee, his heirs or assigns, for the term of seventeen years, of the *exclusive* right to make, use, and vend the invention or discovery throughout the United States and the Territories thereof.

Quoting from the grant forming part of one patent so issued, we find that the form adopted agrees with the Constitution and the statute:

Now therefore these LETTERS PATENT are to grant unto the said The Indiana Manufacturing Company, its successors or assigns for the term of seventeen years from the twenty-seventh day of March, one thousand eight hundred and ninety-four, the *exclusive* right to make, use and vend the said

invention throughout the United States and Territories thereof.

It will be observed that the word used in the Constitution, in the Act of Congress, and in the Patent itself, is the word "EXCLUSIVE". A patent is a *franchise*,—an *exclusive* franchise,—to the inventor or his assignee. It is his to enjoy freely, and, like other franchises granted by the General Government, without any burdens or restrictions except such as are or may be imposed under the Constitution of the United States and laws of Congress made in pursuance thereof. Certainly such a franchise can not be subjected to the burdens of State or municipal taxation.

It is believed that this is the first case in a Federal Court in which the precise question of *whether or not Letters Patent are taxable* has been directly raised. But cases involving practically the same contention have frequently been before this Court, where *other* franchises granted by the General Government were attempted to be taxed; and counsel for appellee has not been able to find a single case at all supportive of the contention that such a franchise could be taxed. On the contrary the decisions are uniform in the other direction, and strongly and emphatically support our contention in this case.

In *California v. Central Pacific R. R. Co.*, 127 U. S. 1, (32 L. ed. 150) this Court in considering this question say:

how can it be *possible* that a franchise granted by Congress can be subject to taxation by a State without the consent of Congress?

Recollecting the fundamental principle that the Constitution, laws and treaties of the United States are the supreme law of the land, it seems to us *almost absurd* to contend that a power given to a person or corporation by the United States may be subjected to taxation by a State. The power conferred emanates

from, and is a portion of, the power of the Government that confers it. To tax it is not only derogatory to the dignity, but *subversive of the powers*, of the Government, and *repugnant* to its paramount sovereignty.

In the great case of *McCulloch v. Maryland*, 4 Wheat. 316, (4 L. ed. 579) Mr Chief Justice MARSHALL in delivering the unanimous opinion of the Court said:

If we measure the power of taxation residing in a State, by the extent of sovereignty which the people of a single State possess, and can confer on its government, we have an intelligible standard, applicable to every case to which the power may be applied. We have a principle which leaves the power of taxing the people and property of a State unimpaired; which leaves to a State the command of all its resources, and which places beyond its reach, all those powers which are conferred by the people of the United States on the government of the Union, and all those means which are given for the purpose of carrying those powers into execution. We have a principle which is safe for the States, and safe for the Union. We are relieved, as we ought to be, from clashing sovereignty; from interfering powers; from a repugnancy between a right in one government to pull down what there is an acknowledged right in another to build up; from the incompatibility of a right in one government to destroy what there is a right in another to preserve.

That the power to tax involves the power to destroy; that the power to destroy may defeat and render useless the power to create; that there is a plain repugnance, in conferring on one government a power to control the constitutional measures of another, which other, with respect to those very

measures, is declared to be supreme over that which exerts the control, are propositions not to be denied.

If we apply the principle for which the State of Maryland contends, to the constitution generally, we shall find it capable of changing totally the character of that instrument. We shall find it capable of arresting all the measures of the government, and of prostrating it at the foot of the States. The American people have declared their constitution, and the laws made in pursuance thereof, to be supreme; but this principle would transfer the supremacy, in fact, to the States.

If the States may *tax* one instrument, employed by the government in the execution of its powers, they may tax *any and every other* instrument. They may tax the mail; they may tax the mint; **they may tax patent-rights**; they may tax the papers of the custom-house; they may tax judicial process; they may tax all the means employed by the government, to an excess which would defeat all the ends of government. This was not intended by the American people. They did not design to make their government dependent on the States.

See also

Osborn v. Bank, 9 Wheat. 738. (6 L. ed. 204).

It is believed that the exact question involved and in the form here presented has not been passed upon by any Federal Court; but the case of *Commonwealth v. Edison Elec. Lt. Co.*, 157 Pa. St. Rep. 529, is believed to be absolutely on "all fours" with the present case, and clearly and conclusively decisive of the question. As the decision is short, I will quote it in full,—as follows:

GREEN, J. The fourth finding of fact by the learned Court below, which is fully sustained by the testimony, declares that "thirty-five thousand dollars in cash and three thousand shares of stock were issued and paid by the defendant company to the Edison Electric Light Company of New York for cer-

tain rights under its patents within the City of Philadelphia, and that without these rights the defendant could not carry on its business and furnish electric light to its customers." Also that "in consideration for said cash and stock paid to the Electric Light Company of New York, the defendant did not receive any tangible property whatever, but merely certain intangible rights or licenses under said Letters Patent." Also that "the defendant does not lease from any persons from whom said licenses were obtained any tangible property whatever, nor does it have in its possession any tangible property belonging to said persons."

This state of facts brings the case within the principle that *capital stock invested in patents or patent rights is not taxable under State laws*, as established by our decisions in the cases of *Commonwealth v. Westinghouse Electric Co.*, 151

Pa. St. 265;

Commonwealth v. Westinghouse Air Brake Co., 151

Pa. St. 276; and

Commonwealth v. Philadelphia Co., 157 Pa. St. 527,

in which the opinion has just been filed.

We are therefore of the opinion that the learned court below was right in its ruling.

Judgment affirmed.

It may be said that in the Pennsylvania cases only a *part* of the stock was issued for the patents, and was, therefore, non-taxable. Counsel for appellee is unable to observe the distinction. *All* the stock *which was issued for patents* was held not to be taxable, and there is no intimation in the decision that if *all* the stock had been so issued that any different rule as to the remainder of it would have been recognized. In the case at bar, in fact, and according to the testimony, every dollar of the stock was issued for the patents, and for nothing else.

This matter has also, since the present suit was begun in the Circuit Court for the District of Indiana, been

the subject of adjudication in the courts of the State of New York.

September 7, 1897, the Supreme Court, Appellate Division, Second Department, in the case of *People ex rel. Edison Electric Illuminating Co. of Brooklyn v. Board of Assessors of City of Brooklyn*, held that stock of a corporation issued for patent rights was not taxable. In that case it was said:

The relator, an electric light company, by its return to the board of assessors, and the evidence of its officers given before that board, showed that its capital stock was \$3,750,000, all of which had been paid in in money, except the sum of \$945,000, which was paid for patent rights.

The whole capital stock had been assessed for taxation, including that "paid for patent rights."

The Court, after giving the particulars, further said:

On a review of the proceedings of the board of assessors by *certiorari*, an order was made by the special term wholly vacating the assessment. From that order this appeal is taken.

We think the order of the special term correct. It is true that the market value of the share stock of the relator was par or better. This may have justified the conclusion that, in a certain sense, the stock of the relator was not impaired; but it did not justify, *in the face of positive evidence to the contrary*, the assumption that the capital stock, even if unimpaired, was represented by assets or property which, under the law of this state, are subject to local assessment. The exclusive privilege or franchise, under *letters patent of the United States*, acquired by the relator for the sum of \$945,000, and carried by it at that value, *was not subject to state or local taxation*.

The order appealed from should be affirmed, with \$10 costs and disbursements. All concur.

46 New York Supplement, 388.

An appeal was taken from the Supreme Court to the Court of Appeals, which on October 4, 1898, affirmed the decision of the Supreme Court, and, in the course of the opinion, said:

The constitution of the United States (article 1, § 8, subd. 8) conferred upon congress the power to "promote the progress of science and useful arts, by securing for limited times, to authors and inventors, the exclusive right to their respective writings and discoveries." In pursuance of this power, congress enacted that patents should be issued to inventors, which should secure to them for a limited term the "exclusive right to make, use and vend the invention or discovery through the United States and the territories thereof." Rev. St. U. S. § 4884. Patent rights are, therefore, granted under the federal constitution, and necessarily for the promotion of federal purposes. *Grant v. Raymond*, 6 Pet. 218, 241; *Ames v. Howard*, 1 Sumn. 482, Fed. Cas. No. 326; *Blanchard v. Sprague*, 3 Sumn. 535, Fed. Cas. No. 1,518.

The federal purpose is primarily to stimulate genius, talent and enterprise by holding out that encouragement which patents give, but ultimately to secure to the whole community the great advantages that flow from the free communication of secret processes and machinery. The next step is that, *patent rights being created under the federal constitution and laws for a federal purpose, the States are without the right to interfere with them.* The right to tax a federal agency constitutes a right to interfere with, to obstruct, and even to destroy the agency itself, for, conceding the right of the state to tax at all, then it may tax to the point of destruction.

The federal government having the right to create the agency, it necessarily has the right to protect it, not only from destruction, but from interference from any other government, whether such interference be in the guise of taxation, or otherwise,

as the power to tax involves the power to destroy, and the power to destroy may render useless the power to create.

The order should be affirmed. All concur.
Order affirmed.

51 Northeastern Reporter, 269.

Especial attention is also called to the case *In re Sheffield et al.*, 64 Fed. Rep. 833. In this case the defendants, Sheffield and Edmunds, were arrested in a prosecution for selling patent rights without payment of a *license tax* prescribed by a statute of the State of Kentucky. The prisoners were taken before the United States Court at Louisville, on a writ of *habeas corpus*. Judge BARR discharged the petitioners, and, in the course of his opinion, made the following pertinent statements:

Thus the question must be, can a State tax, or authorize a county or city to tax, a right—an incorporeal right—which is granted by the United States, and which, under the Constitution, can alone be granted by the United States? We think that question must be answered in the negative, under the principle settled in the case of *McCulloch v. State of Maryland*, 4 Wheat. 316, and the many subsequent cases.

But *the patent right itself*, *i. e.* the right to exclude all others from the manufacture, use, or sale of the invention or discovery, which is a grant by the United States, *can not be taxed by a State*.

We conclude the statute of Kentucky, under which the petitioners, Sheffield and Edmunds, are prosecuted and imprisoned, are *unconstitutional and void*.

It is very gratifying to counsel to find in a decision written since the greater portion of his brief was origin-

ally prepared such a literal and exact concurrence with his views.

Other authorities are referred to in the decisions above quoted from, and many others might be cited, but it seems to be unnecessary.

A PATENT IS A CONTRACT.

Section 10 of Article I of the Constitution of the United States denies to the States the power to impair the obligation of contracts.

A patent is a contract, existing between the inventor on the one hand, and the general public on the other; and is entered into under the Constitution and Laws of the United States. The consideration to the inventor is a temporary monopoly. The consideration to the public is the clear disclosure of the invention, and its free use when the monopoly—or patent—has expired.

Whitney v. Emmett, Baldw. 303; 1 Robb Pat. Cas. 567; Fed. Cas. No. 17,585.

Kendall et al. v. Winsor, 21 How. 322. (16 L. ed. 165.)

To permit states or municipalities to levy taxes upon these contracts would impair the obligations which have been entered into by the Government, on behalf of the people, with the inventor or his assignee.

Moreover "the power to tax involves the power to destroy."

McCulloch v. Maryland, *supra*.

It is impossible to suppose that even the "power" resides in a State to *destroy* a franchise granted by the General Government. States can impose no restriction whatever in respect to Letters Patent of the United States,—much less destroy them.

Castle v. Hutchison, 25 Fed. Rep. 394.

It is no new thing for the State of Indiana to attempt illegal forms of taxation. In 1873 it was attempted to

tax the gross receipts of transportation companies. In June, 1876, Judge DRUMMOND decided that law unconstitutional.

Indiana v. American Express Co., 7 Biss. 227; Fed. Cas. No. 2,071.

WERE APPELLEE'S PATENTS TAXED.

Appellants' main argument, as counsel for appellee reads their brief, is based upon the contention that the appellants, in the acts complained of, did not assess the appellee's patents—thus apparently in effect conceding the correctness of appellee's position that Letters Patent are not taxable.

Appellants' counsel's argument will be reviewed briefly hereinafter.

The present question which will be discussed, is whether or not the taxing officers of Marion County, Indiana, did in fact in this case assess, either the Letters Patent (called in the Indiana Statutes "patent-rights") owned by appellee, or, what appellee contends is the same thing, the *stock* which was issued for and represents these patents, for taxation.

It may be premised that the taxing officers themselves thought they were taxing the patents directly until this controversy was begun. Before bringing this suit appellee's counsel took pains to inquire of the proper officer concerning the matter, and, in connection with securing certified copies of the tax papers, took the precaution to secure an official certificate stating the truth. This is the complainant's exhibit "Auditor's Certificate", and is printed on p. 47 of the printed record in this Court. The part of said certificate pertinent to the present question reads as follows:

I further certify that the assessments for taxation for said years of the said The Indiana Manufacturing Company was based upon the said statements

and assessment lists and proceedings of which the above named exhibits are copies, *and that the item of patents was taken into consideration* in fixing the said assessments.

The evidence in the case is very brief. Indeed, the whole record amounts to but 64 printed pages. The oral evidence is found on pages 20 to 30 inclusive. The documentary evidence is introduced on pages 19 and 20 and is printed on pages 30 to 61 and stipulation pages 1 to 4, inclusive. This documentary evidence consists of certified or admitted copies of the "tax statements" and "assessment lists" secured from appellee by the tax assessor, and which must necessarily form the basis or starting point in the taxation of its property, and of the proceedings of the Board of Review when these assessment lists and tax statements came before them in due course.

Taking these up year by year, the following facts are disclosed:

1892. The auditor was unable to find the original "assessment list" for the year 1892 on file, but only the "statement" which is made by corporations; consequently no copy of said assessment list could be introduced. This "1892 Tax Statement" (pp. 31-33) shows that the capital stock was \$200,000, and the market value thereof is stated as being 10 per cent. of the par value, or \$20,000. "Personal property within the State" is returned at \$5,000. No other facts appear by this statement.

The proceedings of the Board of Review for 1892 are set out on page 34 of the printed transcript, in which Mr. Sharpe says, in answer to questions, substantially the same thing that is shown in the "statement". Question 110. 3 and the answer thereto read as follows:

Q. 3. What kind of business does this company do?

A. Manufacturing straw stackers on an improved *patent* of the old Buchanan cyclone business. *It* is the means of stacking straw with wind; that is what we are doing. We blast the air, or throw it out through a chute. After we demonstrate it, *it* becomes a great deal more valuable. We felt we were putting *it* at a fair value at \$20,000.

Now it is submitted that this answer clearly refers all the way through to the patent. He speaks first of "an improved *patent*" and then says "it"—referring evidently to the patent—"is the means of stacking straw with wind". The word "it" as used in this answer obviously refers to the patent. There is no evidence whatever that the other personal property was of any value beyond the \$5,000 stated in the evidence. It follows that \$15,000 of this assessment was upon the patent,—the "it". The amount of the assessment was exactly the alleged market value of complainant's stock.

The most pertinent evidence respecting these matters for the several years in question will be presently quoted.

See also complainant's exhibit "Auditor's Certificate" (pp. 30-31), which states, in terms, that the item of patents was taken into consideration in the years 1892 and 1893.

1893. For the year 1893 there is, in addition to the "statement" (pp. 34-36), made by corporations, a regular "assessment list" (pp. 37-41), the principal feature of which is a "schedule" of all the personal property held by The Indiana Manufacturing Company on the first day of April, 1893. Item 31 of this schedule reads as follows: "31 | Number of patent rights and value.... | 4 | \$25,000."

Various other items in this "assessment list" amounting to \$8,900, bring the footing of the valuations in said "schedule" up to \$33,900. The accompanying

"statement" shows the capital stock as being \$360,000, all paid up, with none on the market, and the actual value estimated at \$36,000, with an indebtedness of \$25,000. The personal property returned amounts in the footing of the schedule to \$33,900, and includes, of course, the \$25,000 at which the patents were assessed. That is, the amount, \$33,900, is exactly the same on both the schedule and the statement. There was no appearance before the Board of Review in 1893, and the Board on motion fixed the assessment at \$36,000,—which was the amount returned as the *actual value* of its stock. In paying the taxes appellee has by way of abundant caution assumed that the valuation of its personal property was raised from \$8,900 to \$11,000, and has paid taxes on that amount, although it should justly have paid upon \$8,900, as it had no more property; nor is there any evidence that it had, or that there was any undervaluation in the return made.

1894. For the year 1894 there is a similar "statement" (pp. 58-60), and a similar "assessment list" (pp. 46-50), as in 1893. Item 31 of the schedule in the assessment list is precisely the same as before, but the personal property owned by appellee at that time, other than the patents, amounted to only \$7,645, the total footing of the "schedule" being \$32,645. As before, the footing of the "schedule," and the item "Personal property within the State" on the "statement" agree, and are each \$32,645, and it follows that the amount on the statement includes the item of \$25,000 for patents.

The proceedings of the Board of Review for 1894 are set out on pages 1 to 4 inclusive, of the stipulation adding omitted matter to the record. In these proceedings there is erroneously included a colloquy between counsel and members of the Board; but this, as well as the whole proceedings, show clearly that the question of

patents was before the Board. And here develops for the first time the quibble by which the members of the Board of Review hoped to escape from the position that they are taxing the patents. This appears in the question by Mr. Taggart, (stipulation page 2), in which he substantially quotes the question on the "statement" by the corporation, showing that the *value of the stock* is \$36,000 according to said statement. Now it was fully shown on the argument, and clearly appears by the evidence, that the stock was issued for nothing but the patents, and if the Board of Review, as appears by these proceedings, was attempting to assess the *capital stock*, they were simply assessing the patents under another name. That is, they were attempting to do indirectly what it was impossible for them to do directly. Argument on this proposition will be taken up separately.

And I would repeat that these entire proceedings show that the attempt of the Board of Review was to tax the capital stock, and not to tax the tangible property; and that this is a mere attempted evasion of the question at issue. It is shown abundantly that the *stock* represents the *patents*, and has *no value* except as it derives value from the patents.

This Court, in the case of *Handley v. Stutz*, 139 U. S. 417, although in another connection, said:

The stock of a corporation is supposed to *stand in the place* of actual property of substantial value, and as being a convenient method of representing the interest of each stockholder in such property.

In this year the Board, as before, fixed the assessment at \$36,000, notwithstanding the tangible property returned only amounted to \$7,645. The tax receipt complainant's exhibit "1894 Tax Receipt, 1st Installment", (p. 45), introduced in evidence, shows that complainant paid on \$11,000 instead of \$7,645 as it equitably should

have done, thus paying on \$3,355 value of property more than it actually had.

1895. In 1895, acting under instructions, the complainant refused to return its patents, and showed personal property to the amount of \$10,137, both by its statement (pp. 51-53) and its assessment list (pp. 53-58). To the schedule is attached a slip signed by the chief deputy of the assessor, showing the returns of the patents in 1894. The assessment of \$36,000 was adhered to by the taxing officers for this year. The proceedings of the Board of Review for 1895 are not in evidence, as the meeting of that body had not been held at the time the evidence was taken; but the supplemental bill, pages 13 to 15, inclusive, alleges that the Board of Review assessed appellee's property, as previously, at \$36,000, and this is not denied or questioned.

Your Honors will notice that the transactions for the various years vary somewhat from each other, and are treated separately in the pleadings, those for each year being set out separately by means of one or more paragraphs in the bill and supplemental bill. It is believed, however, that there is no evidence anywhere indicating anything else than that the appellants either assessed appellee's patents directly, as appears by the "assessment lists", or assessed the *stock* of appellee, which it is shown was issued solely in payment for the patents, and thus is a mere representative of said patents.

What the assets of appellee were; the value of the same; what the stock was issued for, and the fact that the stock of the company during all this period would have had no value except for its ownership of the letters patent, is shown by the testimony of Mr. JOSEPH K. SHARPE, Jr., the company's Secretary and Treasurer, as follows:

1892. Q. 8. (p. 21.) Excluding patents, did the company at that time [1892] have assets which would amount in the aggregate to any greater sum than \$5,000.00?

A. They did not.

Q. 14. State whether or not they [the patents] had any bearing upon the value of the stock?

A. The value of the stock was based entirely on the patents.

Q. 20. (p. 22.) What do you now say, according to your best recollection, was the indebtedness of The Indiana Manufacturing Company, April 1, 1892?

A. About \$6,000.00.

Q. 21. And what do you say its assets were worth at that time, excluding patents?

A. About \$5,000.00.

X-Q. 74. (p. 29.) What tangible property did the company have on the 1st day of April, 1892, and its value, if you know?

A. It would be impossible to state the value; but the property consisted of machinery, material and money in bank.

X-Q. 75. Have you any idea of the value of the tangible property on the 1st day of April, 1892?

A. My idea would be, that it was principally in machinery and material. Say about \$2,000.00 machinery; \$2,000.00 material; and \$1,000.00 in cash. Now I might be entirely wrong about that.

1893. Q. 23. (p. 22.) At that time [1893] what were the assets of The Indiana Manufacturing Company, excluding the patents which were owned by it?

A. About \$8,900.00.

Q. 24. What was its indebtedness at that time, if you know?

A. About \$25,000.00.

X-Q. 76. (p. 29.) If the Indiana Manufacturing Company had any tangible property on the first day of April, 1893; please state what kind, and give its value?

A. It had stackers in process of manufacture, to the amount of \$3,500.00; material, \$2,000.00; machin-

ery, \$2,000.00, and other property amounting in total to \$8,900.00.

1894. Q. 26. (p. 22.) What were the assets of the company on April 1, 1894, excluding patents?

A. The property of the company was personal property entirely, and the value, exclusive of patents, was about \$7,265.00.

Q. 27. (p. 23.) What was the indebtedness of the company on that date?

A. About \$50,000.00.

X-Q. 77. (p. 29.) If the Indiana Manufacturing Company had any tangible property on the 1st day of April, 1894, please state the kind, and its value?

A. The character of the tangible property is identical with that of the previous year, and the amount about \$7,200.00.

1895. Q. 29. (p. 23.) Please state the kind and value of the assets of the company on April 1, 1895?

A. The assets were personal property, and the value about \$10,000.00, exclusive of patents.

Q. 30. What was the indebtedness of the company at that date?

A. About \$50,000.00.

Generally. Q. 31. Please state what you know about the ability of the Indiana Manufacturing Company to pay its debts out of its tangible property and assets during all the time you have been connected with it, exclusive of any value that might be attached to patents owned by it?

A. Exclusive of patents, The Indiana Manufacturing Company has not been able to pay its debts from its other assets.

Q. 65. (p. 28.) Please state whether or not stock of The Indiana Manufacturing Company has any value except such as is derived from the possession of the patents you have spoken of?

A. The stock of The Indiana Manufacturing Company has no value except that derived from its Letters Patent. The fact of the case is that, except

through them, the company is hopelessly insolvent, and couldn't pay its debts by about \$40,000.00.

X-Q. 80. (p. 30.) You say that your capital stock has no value except that derived from its Letters Patent?

A. I reaffirm that statement, and will say that our manufacturing business has no value except in developing our stacker, the profit of which comes from the fact only that we own the patents for same.

This is fully corroborated by the president, Mr. ARTHUR A. MCKAIN, who testified (p. 33) as follows:

Q. 57. (p. 26.) Do you know whether or not The Indiana Manufacturing Company has ever been possessed of tangible property or assets equal or exceeding its indebtedness?

A. I do.

Q. 58. (p. 27.) What is the fact?

A. The fact is that, aside from its patent rights, it has never at any time subsequent to February 1, 1892, had assets equal to its liabilities.

INCONSISTENCY OF PRESENT CONTENTIONS WITH
APPELLANTS' DUTIES UNDER THE
INDIANA STATUTES.

Appellee also contends that the Board of Review *must* under the Indiana Statutes have taken the "patent rights" directly into consideration in performing their duties. The statutes governing them have already been referred to, and the particular section under consideration is quoted at the bottom of page 4 of this brief. When these taxing officers allege that they did *not* take the patents into consideration, they ask the Court to believe that they *disobeyed* the law which created them and *refused to perform duties clearly laid down in the statutes of the State of Indiana which govern them*. They would have us believe that they are a tribunal to which constitutional questions are delegated for decision, and that they had declared the statutes of the State of

Indiana in this particular unconstitutional, and had proceeded to assess the property which they had decided to be constitutionally and lawfully assessable, and had omitted to assess certain other property, which the statute and statutory form requires them to assess.

Such an assumption needs only to be stated to show its untenability. Taxing officers must necessarily follow the statutes under which they act until such statutes are declared invalid or inoperative by competent authority. If they say they have not, that is tantamount to saying that all their acts are absolutely void, as being without authority of any kind. If they acted lawfully as the Board of Review of Marion County, then they acted *under* the statutes enacted for their guidance,—not in *defiance* of them. If they did not act under the statutes of the State of Indiana by which that board was established, and by which it must be governed, they were a mere assemblage of private citizens, without any authority whatever in the premises. That some or all of the provisions of these statutes may in proper proceedings be found to be unconstitutional and void, in no way avoids the duty of such officers as these to obey and act under them while they appear to be in force.

APPELLEE'S TAXES FULLY PAID.

As heretofore fully shown, appellee has paid not only its lawful taxes, but an amount in excess thereof. It did this out of abundance of caution, and for the purpose of relieving itself from any possible criticism in the matter. It is believed that, as a matter of fact, it would have had proper standing in Court if it had paid no taxes whatever. The proceedings of the Board of Review show that the assessment was inextricably confused and mixed together. It is unquestionably the duty of a complainant before beginning a proceeding of this kind to

pay all taxes which are justly and lawfully assessable, if the same can be ascertained; but where, without its fault, and solely by fault of the taxing officers, the legal and illegal taxes become so confused and mixed that the same can not be separated, then the taxee is relieved of all obligation. To make a tax legally collectable, it must be made in a definite and certain manner, so that the taxee can ascertain the exact amount which ought to be paid. If through no fault of its own, this is not done, then he is relieved of all obligation in the matter. It is not necessary to invoke this rule in the present case, but the matter is called to attention as showing the fairness and good faith with which appellee had proceeded from first to last.

VALUE OF CORPORATE STOCK IMMATERIAL.

The cross-examination of Mr. Sharpe by appellants' counsel, which is found in pp. 28 to 36, inclusive, of the printed transcript, is almost wholly about the value of the stock and the sales which had been made between individuals. It is submitted that this was not proper cross-examination at all, as nothing of the sort had been inquired about on the examination in chief.

We also contend, as elsewhere more fully stated, that the present value of the stock, and what it has sold for from one party to another, can have no possible bearing upon the questions at issue in this case. The corporation issued this stock to pay for certain Letters Patent of the United States; and it is therefore a *representative* of these Letters Patent; and when it passes from hand to hand, and money or other property is exchanged therefor, the taxables are neither increased nor diminished, but are merely transferred from one person to another, while that other person transfers to the first simply his interest in the patents represented by the stock. Such a

transfer does not affect the corporation in any way. The tangible property so transferred is still subject to taxation to the same extent it previously was. And the stock has not lost its representative character.

THAT WHICH CAN NOT BE DONE DIRECTLY CAN NOT
BE DONE INDIRECTLY.

The attempt is made by appellants to make it appear that the taxation is not upon the patents owned by appellee, but upon its capital stock, and the contention is made that this is a different thing than to tax the Patents directly. This is a subterfuge. It is an attempt to vary the form without varying the substance. The bill and the evidence clearly shows that the corporation has no property, except the limited amount fully returned in the schedule and on which all taxes due have been fully paid, other than the patents in question: And that if the stock has any greater value than the tangible property, that value resides wholly in the "patent rights." An attempt, therefore, to levy a tax on any greater value than the tangible property which it owns, under the guise of taxing its capital stock, is *an attempt to do indirectly that which can not be done directly.*

Of course, as a matter of law this can not be done.

There is also good *reason*, as well as good law, against the doing of it in the present case. To illustrate: A has a patent. B has \$100,000. The patent is not taxable. The \$100,000 is taxable. B buys A's patent and pays him the \$100,000 for it. A now has the \$100,000 and it is taxable to *him*. B forms a corporation and puts in his \$100,000 patent, taking stock therefor. There is yet but \$100,000. It has *not* become \$200,000 because a corporation has been formed and certificates of stock have been issued. The money has not been multiplied by the change of hands; neither B nor the corporation has it, or any tangible property to represent it, and, this

being so, neither of them can be taxed upon this value. But the taxing power has lost nothing. The \$100,000 still exists, *in the hands of A*, and is still taxable at the *same rate* and to the *same extent* as originally. The patent, presumably, of course, has a value, but that value consists wholly in the franchise or monopoly which has been granted by the Government of the United States. The presumption may or may not be correct. If it should turn out *not* to be correct, then, under the theory of appellants, the purchasers would not only lose the \$100,000 which they had paid for this supposedly valuable but really worthless thing, but would also be continually taxed because they had done so. If the presumption should be correct, however, this value would soon begin to manifest itself in the form of tangible property growing out of profits upon the business conducted under the franchise or monopoly, and this tangible property so resulting *would* be taxable, and in this way the patent—the privilege—the monopoly—the franchise—although not itself taxable, still is the means of producing taxables. These taxables so produced must represent the full actual value of the patent. It is impossible,—for the reason, among others, that its life is limited, (sometimes by adverse court decisions to a very short period)—that a patent should be worth any more than the money or other property that actually results from its use, which property as soon as produced enters into the body of taxables, and thus it contributes its full share to the support of the government. To tax it in any other manner, or to any greater extent, would be unreasonable and unjust, as well as unlawful.

When the corporation paid \$100,000 for the patent, the officers doubtless thought or believed that they would make at least that much from it. Nevertheless, the corporation did not have one dollar of actual tangible value

in hand because of that belief. And to tax them upon that amount, as though they had the money in hand, is an absurdity, as well as illegal. If *beliefs* are to be taxed, why not tax him whose mental processes have been disturbed, and whose hallucination, in strange contrast to his surroundings, is that he is worth \$1,000,000, upon that amount.

I repeat: A patent is not tangible property, or taxable; its value cannot be determined in advance; and it is or may be valuable, or not, as it is, or is not, profitably operated. Furthermore, if a patent proves profitable in operation the proceeds are taxed the same as other property, and bear their full share of the public burdens. And again, the actual value of a patent cannot exceed the amount which is realized from its exploitation during its lifetime. In and of itself it has and can have no value whatever. Any valuation of it is mere guess work—bald speculation.

It seems hardly necessary to cite authorities for the proposition that that which can not be done directly can not be done indirectly. If any doubt on this subject should exist, it is believed that the following cases are controlling of the question:

In the "license cases," 5 How. 504, (12 L. ed. 256), Mr. Chief Justice TANEY, in discussing the power of taxation by a State of imports, said:

It can not be done directly, in the shape of a duty on imports, for that is expressly prohibited. And as it can not be done directly, it could hardly be a just and sound construction of the Constitution which would enable a State to accomplish precisely the same thing under another name, and in a different form.

In *Brown v. Maryland*, 12 Wheat. 419, (6 L. ed. 678), the Court said:

But if it should be proved that a duty on the article itself would be repugnant to the Constitution, it is still argued that this is not a tax upon the article, but on the person. The State, it is said, may tax occupations, and this is nothing more.

It is impossible to conceal from ourselves that this is varying the form, without varying the substance. . . . All must perceive that a tax on the sale of an article, imported only for sale, is a tax on the article itself. . . .

So, a tax on the occupation of an importer is, in like manner, a tax on importation. It must add to the price of the article, and be paid by the consumer, or by the importer himself, in like manner as a direct duty on the article itself would be made. This the State has not a right to do, because it is prohibited by the Constitution.

In *Crandall v. Nevada*, 6 Wall. 35, (18 L. ed. 745), it is said:

It is claimed by counsel for the State that the tax thus levied is not a tax upon the passenger, but upon the business of the carrier who transports him.

If the act were much more skillfully drawn, to sustain this hypothesis, than it is, we should be very reluctant to admit that any form of words which had the effect to compel every person traveling through the country by the common and usual modes of public conveyance to pay a specific sum to the State, was not a tax upon the right thus exercised.

In *Philadelphia & Reading R. R. Co. v. Pennsylvania*, 15 Wall. 232, (21 L. ed. 146), it is said:

It is of national importance that over that subject there should be but one regulating power, for if one State can directly tax persons or property passing through it, or tax them indirectly by levying a tax upon their transportation, every other may, . . .

. . . It was to guard against the possibility of such . . . embarrassments, no

doubt, that the power . . . was conferred upon the federal government.

Still appellants persist in their contention. I will illustrate their position by an anecdote:

A patient in an insane asylum imagined himself dead. Nothing could drive this delusion out of the man's brain. One day his physician had a happy thought and said to him:

"Did you ever see a dead man bleed?"

"No," he replied.

"Did you ever hear of a dead man bleeding?"

"No."

"Do you believe that a dead man can bleed?"

"No."

"Well, if you will permit me, I will try an experiment with you and see if you bleed or not." The patient gave his consent, the doctor whipped out his scalpel and drew a little blood. "There," he said, "you see that you bleed; that proves that you are not dead."

"Not at all," the patient instantly replied, "that only proves that dead men can bleed."

So in this case: I ask them if they ever *knew*, especially in a court of equity, of anything being permitted to be done indirectly that could not be done directly? If they ever *heard* of its being done? If they *believe* it can be done? And the answer must in each case be, *No*. It seems to be conceded on all hands that a federal franchise can not be taxed. I puncture their argument, and show that the pretense of taxing the *stock* of appellee is a pretense merely; for the stock clearly has no value except such as results from the ownership of these patents; and I say, as you can not do indirectly what you can not do directly, that proves that you can not so tax my client. But they reply "Oh! no, that only proves that we *can* do indirectly what we can not do directly. By the hocus-pocus of placing the valuation upon the stock—a mere

representative of property—instead of upon the property itself, which property is not taxable, we are enabled to *evade* the law, and, notwithstanding that you are right and we are wrong, accomplish our purpose.” Do the gentlemen seriously think a court of equity will lend itself to such double dealing and subterfuges as are involved in this proposition?

WHAT THE STOCK WAS ISSUED FOR.

The testimony hereinbefore quoted shows that it is utterly impossible that the stock should have had any value except such as is derived from the Letters Patent which it owns. In addition to this there is direct testimony showing that the entire capital stock of this corporation was *actually issued* for these “patent rights”, or Letters Patent, and for nothing else. The capital stock was originally \$200,000, and was afterwards increased to \$360,000.

Mr. ARTHUR A. MCKAIN, who has been the president of the company continuously ever since its organization, testifies (pp. 25-27) respecting this matter as follows:

Q. 44. What was the original capital stock of The Indiana Manufacturing Company?

A. \$200,000.00.

Q. 45. For what consideration was that stock issued.

A. It was issued to me in consideration of my assignment to the company of certain Letters Patent.

Q. 46. State whether or not the company received anything else except Letters Patent for said stock.

A. It did not.

Q. 54. Was the capital stock of The Indiana Manufacturing Company ever increased or diminished, and if so, in what amount?

A. It was increased by the issue of \$160,000.00 additional.

Q. 55. For what purpose was this increase of stock made?

A. To acquire the rights in certain United States patents owned by the Farmer's Friend Stacker Company.

Q. 56. What consideration, as a matter of fact, did The Indiana Manufacturing Company receive in exchange for this \$160,000.00 of increased capital stock?

A. Nothing but those rights in patents.

Mr. JAMES P. BAKER, who was at first the Secretary of the company, testifies, in respect to the original \$200,000 of stock, (p. 27) that

the consideration for the stock was for the interest Mr. McKain held in these patents.

Mr. JOSEPH K. SHARPE, Jr., who succeeded Mr. Baker, testifies, (p. 23) as to the additional stock issued, as follows:

Q. 34. What, as a matter of fact, was the additional stock of \$160,000.00 issued for; or in other words, what consideration did the company receive for it?

A. The interest of The Farmer's Friend Stacker Company in certain patents pertaining to straw stackers.

All the assessment lists show that a large part of the personal property returned consisted of "patent rights".

The "1894 Proceedings, Board of Review" (stipulation pp. 1-4) also discloses this fact clearly.

The "1895 Tax Statement" states in answer to the question (p. 51) as to the actual value of the stock:

The entire capital stock was issued in exchange for certain patent rights or Letters Patent and has no value except such as it derives from such patent rights. The tangible property of the corporation is not sufficient to meet its indebtedness.

How can it be said, in the face of all this evidence, that the capital stock of this corporation represents anything but the Letters Patent owned by the corporation? And how can it be said that a tax upon such stock is not an indirect tax upon the patents? Unless, indeed, it should be held that the transaction was so direct as not to merit the title of "indirect."

APPELLEE'S POSITION DISTINGUISHED.

I wish to distinguish clearly and emphatically between appellee's contention in this case—that the State has no power by taxation or otherwise to interfere with the enjoyment—the free unrestricted enjoyment—of the incorporeal right secured to it by its Letters Patent,—and that other but wholly erroneous position, with which it has sometimes been confounded, which would deprive the State of control of tangible property within its borders simply because it might happen to be the subject of a patent, or the power of police regulation. On the contrary I desire to say that in my opinion the State has precisely the same right to tax a patented *machine* that it has to tax an unpatented machine. That it has the same right to establish police regulations regarding the use of a patented invention, that it has to establish police regulations regarding the use of a similar or corresponding unpatented invention. This is a wholly different thing from interfering with or laying burdens upon, the patent itself—the incorporeal right—which has been granted under the Constitution and laws of the United States; and which—by the very phraseology of the Constitution itself, and of the law itself, and of the patent itself,—is made an *exclusive* right; no more to be invaded or interfered with by a state than by an individual.

The real rights of States in the matter have been defined by the Supreme Court in the cases of

Patterson v. Kentucky, 97 U. S. 501. (24 L. ed. 1115).

Webber v. Virginia, 103 U. S. 344. (26 L. ed. 265).

In the latter case the following language is used:

It is only the right to the invention or discovery,
the incorporeal right, WHICH THE STATE
CAN NOT INTERFERE WITH.

Various courts at various times have declared with more or less emphasis against interference under color of authority of State laws with rights secured by Letters Patent of the United States. These questions have arisen in different ways, but the spirit of the great bulk of decisions bearing in any way upon the question is the same. Among the cases in which questions of this character have been considered are the following:

Read et al. v. Miller et al., 2 Biss. 12; Fed. C. 11,610.

Robinson, ex parte, 2 Biss. 309; Fed. Cas. 11,932.

Holliday et al. v. Hunt, 70 Ill. 109.

Crittenden v. White, 23 Minn. 24.

Helm v. First Nat. Bk., 43 Ind. 167.

Woollen v. Banker, 2 Flip. 33; 17 Alb. L. J. 72;
Fed. Cas. No. 18,030.

Cranston v. Smith, 37 Mich. 309.

May v. Ralls County, 31 Fed. Rep. 473.

Gamewell Fire Alarm Tel. Co. v. New York, 31
Fed. Rep. 312.

Castle v. Hutchinson, 25 Fed. Rep. 394.

Counsel is well aware that the Supreme Court of Indiana has said that decisions of this character were overruled by *Patterson v. Kentucky*, *supra*, but if they are carefully examined it will be seen that the questions involved in the last-named case had no relation whatever to those involved in the cases above cited. *Grover & Baker S. M. Co. v. Butler*, 53 Ind. 454, was undoubtedly substantially overruled in the *Patterson v. Kentucky* case; but that case differed widely from the others referred to; and it is strange how the Supreme Court of Indiana

could have ever fallen into the manifest and undoubted error it did in that case, ostensibly on the authority of the other cases; and it is equally strange how it could have afterwards so misinterpreted the decision in the case of *Patterson v. Kentucky*.

The police power of the State is unquestionable. It certainly is not questioned here, any more than is the right to tax tangible property, whether the same be patented or not. Patterson had no more right to sell his dangerous illuminating oil in violation of the Kentucky law, because he had a patent on it, than my brother Taylor would have, if he had a patent on a gun, to shoot an unoffending citizen with it in violation of the Indiana law against murder. When he came to be tried for murder, the plea that he owned a patent, if made, would justly be treated as ridiculous; and if, perchance, the verdict should be that he be hanged therefor, the United States would not interfere. But he might own his patent so long as he pleased, and his free use and enjoyment of it could not be interfered with,—or taxed. Should he engage in the manufacture of fire arms, his manufacturing plant and the product thereof would be subject to taxation. If he engaged in the manufacture of ammunition, he must comply with local laws and regulations regarding the handling of explosive substances. But the patent or patents which he might own—the incorporeal rights—they are his. They can neither be taken away or rendered subject to taxation or other local interference. These grants are from the sovereign power, and—directly or indirectly—in and of themselves, they are subject to no manner of State or local regulation. They can be acquired, transferred, used, bought, sold and enjoyed, in absolute and unrestricted freedom.

FURTHER ILLUSTRATIONS AND AUTHORITIES.

It seems almost a work of supererogation to continue this argument further. Nevertheless, a few illustrations may not be inapt:

Greenbacks—money—until recently when Congress gave the right,—was not taxable, because issued by the Government of the United States.

Bank v. Supervisors, 7 Wall. 26. (19 L. ed. 60.)

The Banks v. The Mayor, 7 Wall. 16. (19 L. ed. 57.)

Ogden v. Walker, 59 Ind. 462.

Even the salaries of officers of the Government of the United States can not be taxed by a State.

Dobbins v. Commissioners Erie Co., 16 Pet. 435.
(10 L. ed. 1022.)

The general power of a State to tax does not extend to agencies of the General Government.

State v. Garton, 32 Ind. 1.

W. U. Tel. Co. v. Richmond, 26 Gratt. (Va.) 1.

When legal part of taxes has been fully paid, illegal remainder can be enjoined.

Tallasee Mfg. Co. v. Spigener, 49 Ala. 262.

As to the right to maintain a suit in equity, and to secure an injunction, where a part of the taxes in controversy would be paid to the state and thus become irrecoverable if paid, see

Foote v. Linck, 5 McLean 616; Fed. Cas. No. 4,913.

See also

First Nat'l Bank of Omaha v. County of Douglas et al., 3 Dillon 298; Fed. Cas. 4,809.

In which are distinct and careful rulings on the questions, by Mr. Justice MILLER.

See also

37 Wis. 75; 42 Wis. 502; 43 Wis. 48;

43 Wis. 55, and 45 Wis. 519.

A number of authorities bearing upon the question involved in this case are collected and discussed in the opinion of Mr. Justice MATTHEWS in

Pullman Southern Car Co. v. Nolan, 22 Fed. Rep. 276.

Injunction will lie to restrain the collection of a tax on personal property, where the enforcement of the tax would lead to a multiplicity of suits, or where the law authorizing the tax is illegal, or where there is no means of recovering back from the State taxes illegally assessed.

City Nat'l Bank v. Paducah, Fed. Cas. No. 2,743.

First Nat'l Bank v. County of Douglas, *supra*.

It is a general and well recognized rule that an injunction will lie against the collection of a tax upon property which is exempted by law from taxation. The case is, at least, as strong, where to levy a tax would be an infringement of rights clearly derived from federal laws, as where there is an express statutory exemption. In other words, it is no less an exemption by law when the condition is clearly deducible from existing constitution and laws, than when there is a particular act exempting the property by set phrase.

WAS THE APPEAL TAKEN IN TIME.

In this case we seem also to be confronted with the question of whether or not the appeal is a proper and lawful one.

This question was attempted to be raised by a motion to dismiss, which the Court denied; without, however, filing any opinion. But, as counsel is informed that the Court sometimes considers it best to postpone the consideration of such questions until the hearing, and therefore denies such motions previously made the question is now again raised for such consideration as the Court may see fit to give it.

The judgment and decree of the Circuit Court of the United States for the District of Indiana appealed from, was made and entered March 3, 1896, as appears on pages 16 and 17 of the printed transcript of record.

The appeal was prayed September 16, 1897, and the same was perfected, by the taking and approval of the appeal bond, September 30, 1897, as appears on pages 17 and 18 of the printed transcript of record. No steps were therefore taken in the matter of said appeal until more than one year and six months after the date of the final decree in the Circuit Court.

The law respecting appeals of this character is found in the Act of March 3, 1891, generally known as the "Evarts Act", (Supplement to R. S., Chap. 517, p. 901) and the title, and those portions of said Act which are believed to have a bearing upon the present matter, read as follows:

AN ACT to establish Circuit Courts of Appeals, and to *define and regulate in certain cases the jurisdiction of the Courts of the United States, and for other purposes.*

SEC. 4. That no appeal, whether by writ of error or otherwise, shall hereafter be taken or allowed from any district court to the existing circuit courts, and no appellate jurisdiction shall hereafter be exercised or allowed by said existing circuit courts.

But all appeals by writ of error [or] otherwise, from said district courts shall *only* be subject to review in the Supreme Court of the United States or in the circuit court of appeals hereby established, *as is hereinafter provided*, and the review, by appeal, writ of error, or otherwise, from the existing circuit courts shall be had *only* in the Supreme Court of the United States or in the circuit court of appeals hereby established *according to the provision of this act* regulating the same.

SEC. 5. That appeals or writs of error may be taken from the district courts or from the existing circuit courts direct to the Supreme Court in the following cases:

In any case that involves the construction or application of the Constitution of the United States.

In any case in which the constitution or law of a State is claimed to be in contravention of the Constitution of the United States.

SEC. 6. That the circuit court of appeals established by this act shall exercise appellate jurisdiction to review by appeal or by writ of error final decision in the district court and the existing circuit courts in all cases other than those provided for in the preceding section of this act, unless otherwise provided by law.

In all cases not hereinbefore, in this section, made final there shall be of right an appeal or writ of error or review of the case by the Supreme Court of the United States where the matter in controversy shall exceed one thousand dollars besides costs.

But no such appeal shall be taken or writ of error sued out unless within one year after the entry of the order, judgment, or decree sought to be reviewed.

SEC. 14. And all acts and parts of acts relating to appeals or writs of error inconsistent with the provisions for review by appeals or writs of error in the preceding sections five and six of this act are hereby repealed.

This Court undoubtedly has jurisdiction of the *question* involved in this case, but it is respectfully submitted that it has no authority to hear and determine the *case* itself, for the reason that the appeal was not taken within the statutory time.

Appellee is of the opinion that this Act of March 3, 1891, in and by the provisions above quoted, repeals and supersedes, at least in so far as it governs the time within which an appeal may be taken is concerned, Sec. 1008 Revised Statutes; and that, under the law as it now stands, no appeal can lawfully be taken to this Court, "unless within one year after the entry of the order, judgment, or decree sought to be reviewed".

It may be said, by way of argument, that it seems to have been the policy of Congress in passing the Act in question, to shorten the time within which appeals might be taken, and so speed the final disposition of litigation in Federal Courts. In the same Act the time for taking appeals to the Circuit Courts of Appeals is fixed at six months, whereas (under Sec. 635 R. S.) appeals from District Courts to Circuit Courts could formerly be taken within one year. It would therefore seem to have been the intention to cut down the time within which appeals might be taken one-half in all cases—from two years to one year in cases appealable to the Supreme Court, and from one year to six months in cases appealable from the inferior to the intermediate Courts.

It may additionally be said that no reason can be seen why two years should be allowed for the taking of appeals to this Court from District and Circuit Courts, when only one year is allowed for the taking of appeals to this Court from the Circuit Courts of Appeals, which are the Courts of greater dignity and consequence. To give the law any other construction than that herein contended for, would therefore seem to involve an inconsis-

tency, as well as a departure from what appellee believes to be its plain letter.

The whole Act of March 3, 1891, from and including its title to the end thereof, should, it seems, be considered together, and all the sections and parts of sections relating to the question at issue be given their due and proper force and signification, so that the decision should turn, not upon isolated words or short phrases, but upon the whole law so far as it relates to the question raised.

Sec. 1008 R. S. is repealed by this Act,—not “by implication”, but by the express language thereof.

By Sec. 14 all Acts and parts of Acts inconsistent with the provisions contained in Secs. 5 and 6 relating to appeals or writs of error, are *expressly* and *in terms* repealed. And Sec. 1008 R. S. which gives two years for an appeal to be taken to this Court, seems clearly inconsistent with the provisions of this Act which reduce the time to one year.

Nor is there anything inconsistent (supposing that to be the rule which is by no means clear, but which it is not necessary to here discuss) in allowing two years for an appeal from or writ of error to the Supreme Court of a State, where cases from such Courts are reviewable here. The matters which come from State Supreme Courts are usually matters of considerable magnitude, and frequently very complex; and they come much less frequently than cases from inferior Federal Courts. Possibly, also, State Court practitioners should be given more time within which to consider federal questions, than practitioners whose business is principally in the Federal Courts. It certainly involves no inconsistency if the practice be differently regulated. Whether it is or not, however, does not seem to be presented in the present proceeding.

Proceeding now to a little more particular discussion of the questions raised: The Act in question clearly was not exclusively for the purpose of creating United States Circuit Courts of Appeals, but in a large measure was amendatory of the law respecting the *jurisdiction* of United States Courts generally, while its title is broad enough to cover these and many "other purposes".

First, it may be asked, why should Congress have been particular to say "according to the provisions of *this* Act," if it had been intended that appeals from Circuit Courts to this Court might be taken under the provisions of some other act or statute?

And why, as appears in the quotation from Sec. 6 of said act, should Congress say: "In *all* cases", etc., and "But *no* such appeal shall be taken or writ of error sued out unless within one year after the entry of the order, judgment, or decree sought to be reviewed", if it had been intended that appeals might in *some* cases be taken within two years?

It is believed that appellee's theory of the policy of Congress in enacting this law is also strengthened by the provisions of Sec. 10, wherein it is provided that cases after review and determination in this Court shall take exactly the same course when they come from the Circuit Courts of Appeals as when they come from the District Courts or existing Circuit Courts.

In fact, the whole policy of the law seems to be to the effect that *all* appeals from lower Federal Courts to this Court should be taken in the same time, under the same rules, be determined in the same way, and disposed of in like manner;—and this seems right and reasonable.

Indeed, there can be no argument based upon reason why a litigant should be given two years within which to come to this Court from a Circuit or a District Court,

when he is given only one year within which to come from a Circuit Court of Appeals.

But, to repeat: The law says "In *all cases* not hereinbefore in this section made final". Not as appellants would seem to contend, "In *all cases in which appellate jurisdiction is primarily in the Circuit Court of Appeals*, and not hereinbefore in this section made final". And not "In *some cases* not hereinbefore in this section made final".

And the law further reads "**no** such appeal"; not "no appeal from a Circuit Court of Appeals", and not "some such appeals".

Indeed, the language used seems entirely plain and clear, and hardly needs definition.

The law in question, like others, should be construed as a whole.

So construed, we submit that it forms a complete and harmonious system in respect to the matters therein comprehended. Under the system thus established this appeal seems not to have been taken in time.

Sec. 14 of this act does not alone repeal Sec. 691 R. S. After doing this it proceeds:

And all acts and parts of acts relating to appeals review by appeals inconsistent with the provisions for in the preceding sections five and six of this act are hereby repealed.

Finally, *this appeal is taken under the authority of the very act in question.* Is it not more congruous to hold that the time and the conditions are governed by the *same* act, than it is to strain language in order to have the time governed by an old law which it seems more consistent to say was superseded by the act in question?

Appellants suggest that they used some of their time in an appeal to the Circuit Court of Appeals, and

for this reason should be excused for their delay. That they frittered away their time in abortive appeal proceedings before a Court which had no jurisdiction of the subject seems scarcely an excuse. They are under no legal disabilities, while they had numerous counsel (including the Attorney-General), and ample means: They are in no position to ask an advantage because of their own mistakes.

The question presented seems quite clear and simple, and a very elaborate or highly finished presentation can, perhaps, be dispensed with.

It appears, over and over again, that it was in the mind of the legislators, in passing the act in question, to establish a *system* of appeals, not for Circuit Courts of Appeals alone, but for *all* United States Courts. If the act is thought to be in any sense ambiguous, it would seem that the evident intention of the legislators should govern in construing it.

SUMMARY.

Our positions briefly stated, are—

1. That a patent *can not* be taxed by a State:

a. Because it is a federal franchise not subject to State authority.

b. Because to do so would impair a contract. Further, a contract to which the United States is a party.

2. That a patent *ought not* to be taxed, because:

a. It has no ascertainable actual value.

b. It expires in a limited time; after which—actually and potentially—its value is at an end.

c. Meantime its entire value has been measured by its earnings, and has gone into and become a part of the mass of ordinary property, which is taxable, and presumably is taxed.

3. That the capital stock of a corporation issued for and representing a patent is to all intents and purposes the same thing as the patent itself.

4. That to tax such stock would be the same thing as taxing the patents for which it was issued.

5. That the statutes of the State of Indiana requiring the taxation of "patent rights" contravene federal law, and are therefore void.

6. That the acts of appellants complained of, being based upon a void law, are also void and without force or authority.

7. The appeal was not taken in time.

REPLY TO APPELLANTS' BRIEF.

THE PLEADINGS.

It seems unnecessary to review appellants' long recitals upon "the pleadings". These pleadings appear on pp. 2-15 of the printed transcript, and show for themselves. Such recitals therefore seem unnecessary in a brief, as they must either be substantially identical with the pleadings or else embody inaccuracies. One such inaccuracy is noticed under the sub-head "Decree", where it is somewhat erroneously stated that the appeal was dismissed "for the reason that this was not a suit to prevent taxation arising under the patent laws of the United States". The real reason for the dismissal, in the language of the Court of Appeals, is:

We are constrained to the conclusion that this court has *no jurisdiction* of an appeal from that decree, and that the proper and only remedy of the appellants is by appeal to the Supreme Court of the United States.

80 Fed. Rep. 1,—at p. 4.

We have already, in our main brief, called attention to the inadequacy of defendants' answer. Also to the futility of the verification of the same because of the provisions of Equity Rule 41, answer under oath having been expressly waived by the bill.

THE QUESTIONS OF FACT AT ISSUE.

That there may be no misapprehension, we desire to state distinctly at the outset, that there are two or three propositions in the nature of questions of fact upon which appellants and appellee distinctly differ.

Appellee's position upon these facts may be stated as follows:

(1). On p. 17 of their brief, appellants' counsel say "This is essentially a case of *excessive* taxation".

With this statement we take distinct issue. We say it is a case where the taxation is *wholly void*, because it contravenes federal law. *The tax complained of is all wrong or all right*. If patents are taxable, we make no complaint concerning the valuation.

(2). We are told (appellants' brief pp. 22-49) that we should have pursued certain remedies under various State laws which are called to our attention.

We say that under the circumstances, federal questions being distinctly presented, we did not need to pursue the remedies prescribed by the State laws. It is a familiar and abundantly well settled proposition that where there is a distinct federal question arising under the Constitution and laws of the United States that parties may apply to the federal courts without calling upon the State courts to intervene. Whether or not there was a procedure open to us in the State courts is therefore immaterial. There is no reason why we should pursue administrative appeals or any other of the various remedies provided for by State statutes in cases of wrongful taxation where questions under State laws arise and are to be considered.

It will be noticed that in the colloquy between appellee's counsel and Mr. Holt, of the Board of Review, to which appellants' counsel has called attention, (appellants' brief, p. 32), it was stated that because it was a federal question we should resort to the federal courts to have it determined.

(3). Appellants' brief (*e. g.* p. 108) proceeds upon the theory that our contention is that only tangible property can be assessed to a corporation. This is incorrect. Our proposition simply is that *we had no other than tangible property which was properly assess-*

able, and that upon this we have paid all that—and more than—was due; that the property upon which the assessment complained of was made is not taxable at all. We have, of course, called it by its proper name—intangible property—but we have *not* said that had the company possessed *other* intangible property it would not have been taxable. No such question has arisen in this case, and it is not necessary to discuss what other intangible property might have been taxable, or what not taxable, if the company had owned any such. As a matter of fact, its only intangible property consists of its Letters Patent, and this case deals solely with the question of whether or not *such* intangible property is taxable, and not at all with whether *all* intangible property is or is not taxable.

It follows from the above that all of appellants' authorities bearing upon the question of *valuation* of property, tangible or intangible, have no application to this case. We are not questioning valuations. We are raising the question of whether or not these taxing officers had the right to assess this particular property at all.

Let us reiterate, therefore: We have nothing to do with these questions of "valuation", or whether or not the tax complained of was an "excessive" tax.

WAS THERE A PLAIN, SIMPLE AND ADEQUATE
REMEDY AT LAW.

Let us examine for a moment the remedies suggested by appellants' brief, (pp. 22-49), and see whether or not they are such plain, simple, complete and adequate remedies as would in any event prevent the resort to a court of equity.

The suggestions, briefly stated, are as follows:

(1). That we should have appealed from the Marion County Board of Review to the State Board of Tax Commissioners.

(2). That afterwards we should have filed a petition with the Board of County Commissioners for Marion County.

(3). That then we should have filed a suit in the Circuit Court of Marion County.

(4). From there we should have gone to the Appellate Court or Court of Appeals for Indiana.

(5). From there we should have gone to the Supreme Court of the State of Indiana.

(6). Thence we could have come, by appropriate proceedings, to this Court.

We say, in addition, under the plain letter of the law, that we should have had to go to the Superior Court of Marion County, sitting as a court of claims against the State of Indiana, for the State's portion of the taxes; and that thereafter, if we had succeeded in obtaining a judgment we should have had to await a legislative appropriation. If defeated, then we should have to take the course of appeals above pointed out before reaching this Court. These are the plain provisions of the statutes, and obviously should be followed if that course of procedure was adopted.

Instead of this multiplicity of proceedings before various boards and various courts, and in order to settle the question promptly, and by the proper authority for considering the question (it being a federal question), we applied at once to the Circuit Court of the United States for the District of Indiana, where we obtained prompt relief, a temporary injunction being issued to run with the subpoena.

From the judgment of that Court we come direct to this Court, without any intermediate proceedings before

County Commissioners, Tax Commissioners, County Courts, Appellate Courts, or State Supreme Courts. All of the long, tedious circumlocution has been avoided, and the question is speedily and clearly presented.

That the appellants first took some time in attempting to appeal to a court which had no jurisdiction can not possibly have any bearing upon the question. Suppose that they had attempted to appeal to the Court of Appeals of the District of Columbia: Would that fact be held to be a complication of the proceeding? Manifestly not. It would be treated, so far as the merits of the case are concerned, precisely as the appeal to the Court of Appeals for the Seventh Circuit should be treated. That is, as though it had never been done. When they say at p. 47 of their brief, we had a "short, speedy, simple, summary and cheap remedy," they speak merely of the filing of the claim before the Board of County Commissioners, utterly ignoring the numerous other steps which must intervene before the final adjudication of the matter. It is disingenuous to say that the Board of County Commissioners would probably allow the claim and order the money paid. On the contrary, common sense and human experience teaches us that in the face of the action of the taxing boards and the Indiana statutes they would probably have disallowed the claim.

The true rule for the application of equitable remedies is stated by this Court in *Watson v. Sutherland*, 5 Wall. 74, (18 L. ed. 580), where it is said quoting from *Boyce v. Grundy*, 3 Pet. 210:

It is not enough that there is a remedy at law; it must be plain and adequate, or in other words, as practical and efficient to the ends of justice, and its prompt administration, as the remedy in equity.

This has long been the established rule in Indiana, as declared by its Supreme Court in 34 Ind. 124; 44 Ind.

261; 67 Ind. 448; 98 Ind. 4; 113 Ind. 26, and 130 Ind. 549, in each of which it has quoted with approval the above quoted language of this Court.

If anything can be said to be the established law in Indiana, this surely must be it.

As a federal question was involved, we had a right to be heard in the federal courts.

A portion of the taxes complained of are the taxes levied for and on behalf of the State of Indiana—a sovereign State, against which no suit can be maintained, and from which taxes once paid are irrecoverable by any process of law. It follows, therefore, that any proceeding *at law* in the United States courts (to which, there being a federal question, we had a right to apply) would be futile, because, whatever judgment was rendered, it could not be enforced. To obtain a judgment without the means of enforcing it is certainly not an adequate remedy.

Therefore, the *only* adequate remedy, which could be applied by the court having jurisdiction of the questions involved, and to which we had a right to apply, would be to restrain and prevent the collection of the tax, and this could only be done in an equitable proceeding.

This will appear more fully hereinafter, in connection with other branches of the discussion.

REFUNDING OF TAXES.

On pp. 39 to 47 of their brief, appellants undertake to tell us what we should have done.

The first proposition is that we “should have paid the taxes assessed,” and then done some or all of the numerous things pointed out to get them back.

On pp. 40-41 they quote the law governing petitions to County Commissioners, by Section 1 of which it ap-

pears that where it is proved to said Commissioners that taxes have been paid which were wrongfully assessed they may order the amount "to be refunded to said payer from the county treasury, so far as the same was assessed and paid for county taxes."

By Section 2 if said Commissioners find that any such taxes have been paid for State purposes they are required to certify their finding to the Auditor of State, who may order it paid.

On p. 41 a portion of the statute relating to bringing claim suits against the State of Indiana is quoted.

The section providing the means for securing payment of judgments rendered in such claim suits, however, is not brought to the attention of the Court.

The section governing this matter reads as follows:

Execution, non-issue of — judgment bear interest. 6.—Whenever by final decree or judgment of said Superior Court of Marion County, Indiana, or the Supreme Court, a sum of money is adjudged to be due any person from the State of Indiana, *no execution* shall issue thereon, but said judgment shall draw interest at the rate of 6 per cent. per annum from the date of the adjournment of the next ensuing session of the General Assembly until an appropriation shall have been made by law for the payment of the same, and said judgment paid.

On p. 42 it is pointed out how the city clerk may correct the erroneous assessments "proven and made apparent to him," and how the Common Council may order "the amount erroneously assessed against and collected from any taxpayer to be refunded to him."

It must be remembered that the law providing for appeals, quoted at p. 29 of appellants' brief, expressly provides that "the pendency of such appeals shall not operate to stay the collection of any tax"; and, under the statute above noted providing for claim suits against

the State of Indiana in the Marion Superior Court, even if judgment had been obtained there for the money which had been wrongfully and unlawfully collected, still, under that statute, no execution could have issued, but the claimant must wait until an *appropriation* should be made by the Legislature of the State of Indiana. In the midst of the present socialistic crusade against corporations, when, may it please the Court, could we depend upon *legislative appropriation* to refund taxes collected from a *corporation*?

Is this an "adequate" remedy that is thus pointed out to us?

And, independently of these facts, can it be properly said that *any* remedy, which is characterized by circumlocution, and which involves a multiplicity of steps, is a plain, simple and adequate remedy, such as will preclude a court of equity from granting relief?

Administrative petitions and appeals!—court of claims proceedings!!—legislative appropriations—including lobbying, committee hearings, and the usual *et ceteras*!!! These are the "adequate" remedies we are told we should have pursued.

And when, may it please the court, has it been the law, where there was a wholly illegal and unwarrantable attack upon property rights, that the attacked party must *wait* until the mischief was completed, and then sue for a recovery, instead of taking prompt steps at the inception to, by injunction, stop the unlawful act, and thereby prevent the threatened waste and save the burdensome expense.

And is it not an equally good ground for equitable relief, that proceedings at law must have a tedious and round-about character, as that they would require a "multiplicity" of actions?

In this case, however, there must have been also a *multiplicity* of actions to recover the money if it had been paid over. The bill shows that a part of the taxes were payable to the City of Indianapolis. It is not pretended that the sections 7915-16, referred to (p. 40) as authorizing proceedings before the Board of County Commissioners for the recovery of illegally paid taxes, have any applicability to the portion of the taxes belonging to the City of Indianapolis. Indeed, it has been expressly decided by the Indiana Appellate Court (*Simonson v. West Harrison*, 5 App. 459), that this section has no application to the refunding of taxes erroneously collected by incorporated towns. This also appears by the language of said sections which refer expressly to "county taxes" and "State purposes."

We are told (p. 37) that the presumption is that the State Board of Tax Commissioners would have corrected an illegal assessment. Remembering that the assessment in question was required by a statute of the State of Indiana, and is illegal and void only because of the superior federal law, the "presumptions" seem to be the other way. Special circumstances result in exceptions to general legal rules, as well as to other rules. It can not possibly be the legal presumption that it was the right or duty of an administrative or executive officer to "at his peril" determine that the statutes of the State of Indiana were unconstitutional. In *Huntington v. Worthen*, 120 U. S. 97, (30 L. ed. 588) it appears that a tax collector had ruled that a certain statute was unconstitutional. This Court having found the statute actually unconstitutional, did not disturb the work of the tax collector based upon his ruling. But so far from determining that it had been his *duty* to so find, it said:

It may not be a wise thing, as a rule, for subordinate executive or ministerial officers to undertake

to pass upon the constitutionality of legislation prescribing their duties, and to disregard it if in their judgment it is invalid. This may be a hazardous proceeding to themselves, and productive of great inconvenience to the public; but still the determination of the judicial tribunals can alone settle the legality of their action.

In other words, the Supreme Court in this instance excused what "as a rule" it declared not wise.

There is another reason why appellee should not pay, and then sue to recover back, clearly shown by the following authority:

It is next suggested that since there is a plain, adequate and complete remedy by paying the money under protest and suing at law to recover it back, there can be no equitable jurisdiction of the case.

The reply to that is, that the bank is not in a condition where the remedy is adequate. In paying the money it is acting in a fiduciary capacity as the agent of the stockholders; an agency created by the statute of the State. If it pays an unlawful tax assessed against its stockholders, they may resist the right of the bank to collect it from them. The bank, as a corporation, is not liable for the tax, and occupies the position of stakeholder, on whom the cost and trouble of the litigation should not fall. If it pays, it may be subjected to a separate suit by each shareholder. If it refuses, it must either withhold dividends and subject itself to litigation by doing so, or refuse to obey the laws, and subject itself to suit by the State. It holds a trust relation which authorizes a court of equity to see that it is protected in the exercise of the duties appertaining to it. To prevent multiplicity of suits, equity may interfere.

Cummings v. National Bank of Toledo, 101 U. S. 153, (25 L. ed. 903.)

WANT OF EQUITY.

The objections urged in the argument to support the contention that the Circuit Court should have dismissed

the bill for want of equity are substantially directed against the jurisdiction of that court, the contention being in effect that State tribunals in various proceedings under the statute had jurisdiction, and, therefore, that the United States Circuit Court had not.

We contend on the contrary that a federal question was involved, which, under the decisions, brings the case clearly within the jurisdiction of a federal court.

In the case of *Starin et al. v. New York City*, 115 U. S. 248, (29 L. Ed. 388), this court stated the rule, and collated the authorities, as follows:

The character of a case is determined by the questions involved. *Osborn v. Bank of U. S.*, 9 Wheat. 824. If from the questions it appears that some title, right, privilege or immunity, on which the recovery depends, will be defeated by one construction of the Constitution or a law of the United States, or sustained by the opposite construction, the case will be one arising under the Constitution or laws of the United States, within the meaning of that term as used in the Act of 1875; otherwise, not. Such is the effect of the decisions on this subject. *Cohens v. Virginia*, 6 Wheat. 279; *Osborn v. Bank of United States*, 9 Wheat. 824; *The Mayor v. Cooper*, 6 Wall, 252; *Gold Washing & Water Co. v. Keyes*, 96 U. S. 201; *Tennessee v. Davis*, 100 U. S. 264; *Railroad Co. v. Mississippi*, 102 U. S. 140; *Ames v. Kansas*, 111 U. S. 462; *Kansas Pacific v. Atchison R. R. Co.*, 112 U. S. 416; *Provident Savings Soc. v. Ford*, 114 U. S. 641; *U. Pacific R. R. Removal Cases*, 115 U. S. 11.

APPELLANTS' AUTHORITIES.

Appellants have cited many authorities, (and might have cited many more), the gist of which is to establish various propositions which may be summarized as follows:

1. Equity will not intervene where there is a plain, simple, complete and adequate remedy at law.

2. That no injunction will be granted against merely excessive taxation; or, as it is expressed in many cases, against an unjust or unequal *valuation*.

3. That in the *valuation* of property the action of a duly authorized tax board is final, and can not be set aside except for fraud, or some action which would render the assessment wholly void.

These propositions, from appellee's standpoint, need not be controverted or questioned. Time will not permit an elaborate review of all of appellants' authorities, and, therefore, those which seem to bear wholly or mainly upon the above propositions will mostly be omitted from the discussion. During a hasty examination of appellants' authorities as a whole, however, some thoughts have occurred to counsel for appellee, and these will be brought together at this point in the discussion.

The case of *Crown Cork & Seal Co. v. Maryland*, 87 Md. 687, which is so elaborately quoted from and discussed by appellants' counsel, brief pp. 89-94, is easily to be distinguished from the present case. In that case it appears that the corporation *purchased* patent rights. It does *not* appear that the stock was issued for the patent rights. There is a wide difference between the two cases. In the one case the stock is solely the representative of patents, and nothing else. In the other case, the patents having been purchased *subsequently* with cash, have no necessary direct connection with the stock.

In the *Crown Cork & Seal Co.* case, also, appellee submits, with all due respect, that the Court's opinion contains much that is unsound, both in law and in logic. Its remarks, so far as they bear directly upon the ques-

tions presented here, are also largely in the nature of *obiter dicta*.

The Court (at p. 698) itself says:

It will remain *for future consideration* whether a patent right may not of itself be a proper subject of taxation, but that as just stated is *not* a question necessary to be decided on this appeal.

Distinguishing further, it appears, by the opinion of the Court (at p. 696), that in Maryland—

the tax is not a tax upon the stock or upon the corporation, but upon the owners of the shares of stock, though the officers of the corporation are made the agents of the State for the collection of the State tax.

The Court further declares (at p. 700) that the rule in Pennsylvania that "the tax being upon the capital stock, it is a tax upon the company's property and assets", is "not the law of Maryland".

It is difficult to see, therefore, even conceding the conclusion of the Court under the law of Maryland to be sound, (which we are by no means prepared to do), how that case can be regarded as much of an authority here, where the law of the State is very different from what the law of Maryland is declared to be.

Storage Battery Co. v. Board of Assessors, 60 N. J. L. 66.—In this case, as in *People v. Campbell*, there was no such contention made as in the case at bar. The Court, at p. 68, says:

The contention is that the company is wholly exempt from taxation by force of the proviso in Section 4 of the Act of 1892. Gen. Stat., p. 3337, Section 260.

The statute in question provides that corporations "shall pay an annual license fee or franchise tax of one-tenth of one per centum on all amounts of capital stock

issued and outstanding", etc., and the *proviso* in question reads, in part, as follows:

Provided, that this act shall not apply to . . .
 . . . manufacturing or mining corporations at least 50 per centum of whose capital stock issued and outstanding is invested in mining or manufacturing carried on within this State.

In this New Jersey case, therefore, there is a very clear and a very broad distinction to be drawn. In New Jersey the tax upon the capital stock is the tax levied upon the corporation *for the privilege of being a corporation* under the New Jersey laws. Whether the company has any assets at all or not has nothing to do with the case. It is the same as the fee charged in many States, including the State of Indiana, for the privilege of becoming a corporation, and maintaining itself as a corporation. In the quotation given by counsel this clearly appears, which quotation contains (p. 95) the following language:

Corporations of the class to which this company belongs are taxable with respect to the capital stock issued and outstanding *as a fixed factor* without regard to the purpose for which the capital stock was issued or whether issued for value or not.

In other words, there is no "valuation" of the capital stock involved in this taxation at all. It is in the nature of a license tax or fee and nothing else. It would be hard to imagine conditions more different than those of this case.

Clement v. People, 177 Ill. 144.—Is merely to the effect:

That the Courts have no power to revise an assessment merely because of a difference of opinion as to the reasonableness of the valuation placed on the property.

And that fraud cannot be established by testimony amounting rather to "inferences or conclusions" than to statements of facts.

Kinley Mfg. Co. v. Kochersperger, 174 Ill. 379.—Relates to a simple case of *over-valuation*, and the judgment of the lower court dismissing the bill was affirmed upon the ground that

A Court of Equity is not empowered to value property for taxation, but these boards afford ample remedy for all errors in *valuation*, and they must be resorted to for relief when complaint is made *in that regard*.

Keokuk Bridge Co. v. The People, 161 Ill. 132.—Is a case where taxing officers in Illinois had erroneously included 850.52 feet of a bridge not within their jurisdiction, but lying beyond the Illinois line, in the State of Iowa, in their assessment. The Court, after stating the familiar rule that "courts have no power to revise an assessment merely because of a difference of opinion as to the reasonableness of the valuation placed upon the property", continued:

In the case at bar, the bridge from the State line to the east end of the draw-span was not within the limits of the jurisdiction of the State, and *there was no power or authority to assess the same for taxation in this State*. Said property was not subject to taxation here. The effect of including its value in the valuation made by the assessor was to render the assessment invalid.

And *reversed* the judgment.

If appellants can get any comfort from this authority, they are welcome to it.

In the other case of the *same title*, 161 Ill. 514, the questions merely relate to clerical errors of the printers in the printed proceedings of the State Board of Equali-

zation, and to *over-valuation*. These matters have no bearing on the case at bar.

People, etc., v. Campbell, 138 N. Y. 543.—Is a case much relied upon by appellants, and extensively quoted from in their brief. It is to be regretted that they did not quote the entire case. We will supply some of the deficiencies:

The *official reporter's* summary of the contention of appellant contains the following:

The capital stock of the relator invested in Letters Patent of the United States and of other countries in North and South America is not liable to taxation here, *except* in so far as the said Letters Patent of the United States *apply to the territory within the State of New York*.

The point of this case, therefore, that patents are not taxable at all, was not made in that case. Courts do not commonly decide points not presented for decision.

The Court, (by EARL, J.), near the beginning of the opinion, shows that its understanding of the question to be decided was the same as that of counsel, by saying:

The relator does not complain that the value placed upon its capital was too high. But *it claims that none of it was employed within the State*, and hence, that none of it could be the basis of taxation under the act, and *whether this claim as to the entire capital or any portion of it is well founded is the sole matter for our determination*.

The New York Court of Appeals did *not*, in *People v. Campbell*, pass upon the question now before us, because no such question was there to be passed upon.

Beginning at p. 96 of their brief, appellants elaborately discuss and quote from the "Bank Tax Cases," or *Van Allen v. Assessors*, 70 U. S. 573.

Undoubtedly, these are leading cases, and the decision there reached by a majority of the Court is of great importance, and settled important questions of taxation.

But these cases seem to have no application to the case at bar, as the facts are widely different, and the statutes involved still more widely different.

The Court in that case, after enumerating the provisions of the Act of Congress under which national banks are established, said:

Now, these are *very great powers and privileges* conferred by the Act upon these associations, and which are founded upon a **new use** and application of these government bonds, especially the privilege of issuing notes to circulate in the community as money,

In the granting of chartered rights and privileges by government, especially if of great value to the corporators, certain burdens are usually, if not generally, imposed as conditions of the grant. Accordingly, we find them in this charter. They are very few, but distinctly stated.

They are, *first*
and *fourth, a State tax* upon the shares of the association held by the stockholders, not greater than assessed on other moneyed capital in the State, nor to exceed the rate on shares of stock of State banks.

The question involved is altogether a different one from that decided in the previous bank cases, and stands upon different considerations. The State tax, under this Act of Congress, involves no question as to the pledged faith of the government. **The tax is the condition for the new rights and privileges conferred upon these associations.**

The Court proceeds to point out a distinction between shares held by individuals, and the capital stock of the corporation, and shows how Congress had provided that the president and cashier of such banks shall

cause to be kept at all times a full and correct list of the names and residences of all the shareholders, and the number of shares held by each, which list shall be subject to the inspection of shareholders and creditors "and the officers authorized to assess taxes under State authority", etc.

In the present case we find no such conditions. There is no **new use** of Letters Patent specially conferred by Act of Congress upon this corporation. There are no great and extraordinary "powers and privileges" here to be considered. The patents in question are ordinary patents, issued in the ordinary way, with the usual rights and privileges which are granted when patents are issued, and no others. The corporation can make no other or different use of its patents than an individual could. The corporation is organized under the general Indiana law governing the organization of ordinary corporations. There is nothing whatever in that law which prevents it from owning and using patents. There is no reason, in fact, or assigned, why it should not make this ordinary and regular use of its patent privileges. There is no suggestion here that the State of Indiana has ever attempted to restrict its corporations in the matter of ownership or use of patents. In short, the corporation stands before us, in respect to its ownership of patents, precisely as an individual patentee or owner of patents might do. There is no legerdemain involved in the matter. There is no mystery to be solved. Appellee is under no legal disabilities in respect to any question here presented. It has the same rights, as a suitor, that any other person, natural or artificial, might have. And the questions to be decided are not to be decided in view of *special* legislation granting "very great rights and privileges", (such as the privilege of issuing its notes for money), but are to be decided

wholly under the *general* legislation governing patent property, under which it stands, and must stand, in the same position as any other owner of patent property.

In the case of *Owensboro National Bank v. City of Owensboro*, decided by this Court, April 3, 1899, after citing *McCulloch v. Maryland*, 4 Wheat. 316; *Osborn v. Bank*, 9 Wheat. 738, and *Davis v. Elmira Savings Bank*, 161 U. S. 283, (from the latter of which a quotation is taken) the Court says:

It follows then necessarily from these conclusions that the respective states would be wholly without power to levy any tax, either direct or indirect, upon the national banks, their property, assets, or franchises, were it not for the permissive legislation of of Congress.

These bank cases, therefore, are not authorities for the contentions of appellants in this case. Congress has not passed any act permitting the taxation of patents, or "patent rights", and it may further be said that obviously these cases constitute no exception to the rule that that which can not be done directly can not be done indirectly, because United States bonds are *always* included in the capital of national banks. The authorization of the act of Congress was complete, and Congress knew when it passed the act that a part of the stock of a national bank *must* (sec. 5159 R. S.) be invested in Government bonds, because a bank can not be a national bank without owning Government bonds—and, therefore, Congress here has directly—as directly as if it in terms had said so—authorized the taxation of bonds so held. There is nothing indirect about it. To authorize a thing to be done which necessarily and inevitably causes another thing to be done, is the same thing as authorizing that other thing to be done,—under all the rules of logic, reason and common sense.

Appellants in their brief (p. 35) quote from this Court in *Adams Express Co. v. Ohio*, 165 U. S. 219, the following:

Construction by the State courts of last resort of State constitutions and statutes will ordinarily be accepted by this court as controlling.

We do not perceive what bearing this has upon the present controversy, as it is a construction of the *federal* constitution and laws which we are seeking, and not a construction of the State constitution and laws. The only contention concerning State laws arising under the issues made by the pleadings in this case, and which is presented to the Court for determination, is whether or not the statutes of the State of Indiana providing for the taxation of "patent rights" are or are not in conflict with the federal law. In other words, we insist that it is this *federal question* which is to be determined, for the determination of which we believe we had the right to resort to the federal courts, and it has not been suggested that any more appropriate remedy might have been sought in the federal courts than that which was applied for. Indeed, there is no suggestion anywhere in appellants' brief that we might have pursued *any* other course in the federal courts than that which we did pursue. The entire contention is that we should have applied to State tribunals for our remedy. If we are correct in our contention that we had the right to go to the federal court, it is entirely immaterial what course might have been proper had we gone to the State tribunals. The question, therefore, turns upon whether or not we had the right to have the federal questions involved determined in a federal court.

If we had the right to go to a Federal Court at all, we had the right to bring such a proceeding there as would be effective.

It is a distinct allegation of the bill of complaint (transcript, p. 6) that the taxation was in large part

for and on account of and for the benefit of the State of Indiana, a sovereign State, and one of the United States, and that under the Constitution and laws no suit can be maintained against the State of Indiana. That it is a part of the duty of the said defendant, Sterling R. Holt, Treasurer, as aforesaid, to pay over into the treasury of the said State of Indiana a large proportion of the amounts so received and collected by him as taxes, and, therefore, that if said amounts are so collected and received and paid over, they will become mixed with the moneys of said State, and thus be beyond reach of any process of this or any Court, and irrecoverable, and that great and irreparable injury will result to your orator if such unlawful collection and paying over as aforesaid be not prevented.

There is no denial of this allegation in the answer, nor is it there pointed out how we might have proceeded better, or differently.

The uncontroverted allegations of the bill must certainly be taken as true, and if true, it is hard to imagine any effective remedy not embodying injunctive relief.

The only remedies suggested by appellants' brief begin with a series of administrative appeals and petitions, not before Courts, but to Tax Boards and County Commissioners. And when, in the course suggested, we should finally reach a court, it would not be a Federal Court (to which we had a right to apply to have our federal question determined) but a State Court. If we had pursued the course now suggested, it may be remarked, the hearing here would have been the sixth, instead of only properly the second.

From every point of view, therefore, it seems the course pursued by appellee was the proper one.

A pertinent authority against the course suggested by appellants is found in the decision of this Court in *Morgan v. Beloit*, 7 Wall. 613, (19 L. ed. 203), where the Court said:

If the town should be compelled to pay the entire amount, the right is given by the statute to recover back the proportion for which the city is liable. ***This would involve circuity of litigation.*** The remedy at law is, therefore, neither plain nor adequate.

In the *State Railroad Tax Cases*, 92 U. S. 575, (23 L. ed. 663) which has been cited by the appellants, we find much which is instructive.

In that case, among other things, the Court says:

One of the reasons why a Court should not thus interfere, as it would in any transaction between individuals, is, that it has no power to apportion the tax or to make a new assessment, or to direct another to be made by the proper officers of the State.

This objection does not obtain in the present case, as, whatever the event, no new assessment is to be made. The assessment complained of will stand, or it will be wholly wiped out.

The Court also, in giving reasons why the decrees should be reversed and remanded with directions to dissolve the injunctions, stated:

There is no violation of the constitution, either in the statute or in its administration, by the board of equalization. No property is taxed that is not legally liable to taxation; nor is the rule of uniformity prescribed by the constitution, violated.

In the present case appellee contends that there has been a violation of the constitution, and that property *has* been taxed that is "not legally liable" to taxation.

Further along the Court observes that it is a profitable thing for corporations to obtain a preliminary injunction as to all their taxes and contest the case for

several years, and at the end submit to pay what is found to be due, and states that before a bill can be maintained, what is conceded or appears to be due must be paid. In this case appellee did pay all and more than seems to be due.

It will thus be seen that appellee has scrupulously kept itself within the law as laid down in this case. It seems, therefore, that it is an authority rather in its favor than against it.

In *P., C., C. & St. L. Ry. Co. v. Board of Public Works of the State of West Virginia*, 172 U. S. 32, this Court quotes approvingly from the "State Railroad Tax Cases", and thus it may be considered that the decision in the last named case was reached subject to the rule laid down in the former case. It does not appear, at all events, that any federal questions were presented, such as are inseparably involved in the determination of the case at bar.

In the *State Railroad Tax Cases*, *supra*, this Court said:

These reasons and the weight of authority by which they are supported, must always incline the court to require a clear case for equitable relief before it will sustain an injunction against the collection of a tax, which is a part of the revenue of a State. Whether the same rigid rule should be applied to taxes levied by counties, towns and cities, we need not here inquire; but there is both reason and authority for holding that the control of the courts, in the exercise of power over private property by these corporations, is more necessary, and is unaccompanied by many of the evils that belong to it when affecting the revenue of the State. High, Injunc., Sec. 369 and cases there cited. The assessments in the case before us, of which complaint is made, are all made by the State Board of Equalization; and though the taxes

are collected by the county authorities, a large part of them go to make up the revenue of the State.

It would seem, therefore, that this Court has recognized a distinction between the taxes levied by a State Board of Equalization and taxes levied merely by county officers, and we call the Court's attention to that distinction.

This taxation, while partly for the benefit of the State of Indiana and partly for the benefit of the City of Indianapolis, was levied by Marion County, and the officers against whom this proceeding was directed are county officers.

The action of no State official is involved in this case.

In this same case the Court also said:

We do not purpose to lay down in these cases any absolute limitation of the powers of a court of equity in restraining the collection of illegal taxes; but we may say that, in addition to illegality, hardship or irregularity, the case must be brought within some of the recognized foundations of equitable jurisdiction.

It would seem to us that for numerous reasons given in this brief we have brought this case "within some of the recognized foundations of equitable jurisdiction."

If upon the authority of the *State Railroad Tax Cases* it is urged that we should have paid the State taxes, and confined our suit to the county, city and town-ship taxes, we reply: If we had paid the State taxes, we had no remedy at law for their recovery, because suit in the Superior Court of Marion County would not have resulted in a judgment which could have been enforced by execution and until an appropriation was made by the legislature such judgment would be of no avail. This remedy, therefore, is entirely inadequate. Moreover, it was a remedy which could not be resorted

to in the federal courts, to which complainant, (by reason of this case presenting a federal question) had the right to resort to recover money for taxes illegally exacted from it, or, in a proper case, to enjoin their collection. Certainly, we can not be compelled, in the first instance, —where we have a cause of action arising under the Constitution and laws of the United States, and a right to resort for an enforcement of our remedy, whatever it is, to the federal court,—to resort to any remedy provided by the State statutes which can not be administered in federal courts, or which would not result in a judgment which would be directly enforced by the Court. If it were otherwise, our right to resort to federal courts would be taken away by State legislation, and, clearly, no suit at law can be maintained in a federal court to recover State taxes, because the suit must be either directly against the State, or a State officer representing the State. Prohibition to sue a State equally applies against a State officer, acting for and representing the State.

Therefore, the statutory remedies suggested,—appealing to the State Board of Tax Commissioners of the State of Indiana, and application to the Board of County Commissioners of Marion County, and application to the Common Council of the City of Indianapolis, for the refunding of taxes illegally collected,—do not apply:

1. Because they can not be administered in the federal court; and if appellee was required to resort to them, it would be deprived of its right to resort to the federal court.

2. Because they do not result in a judgment which can be enforced by the Court by ordinary processes. They are, therefore, not an adequate legal remedy, such

as would prevent equitable relief by injunction in the federal courts.

3. It is also the established law in the State of Indiana that the collection of an illegal tax can be enjoined notwithstanding the statutory remedies for the refunding of such taxes when paid.

Hyland, Auditor, et al., v. The Brazil Block Coal Company. 128 Ind., 355, is an authority in point. There the company had made a full return of its taxable property, and the proceeding was to enjoin the collection of a tax levied on its capital stock, which was assessed additionally to the tax on the property. In the course of its opinion the Court, at p. 342, said:

The plaintiff does not seek to defeat a part of an assessment, but it seeks to prevent the levy of an assessment upon property not subject to taxation. The statute does not, as we have seen, authorize the assessment of the capital stock, and as there is no property subject to taxation, there can be no part of an assessment which the appellee is bound to pay.

As it is made to appear by the complaint that the capital stock did not exceed in value the tangible property returned for taxation, there is no question as to the effect of the finding of the Board of Equalization; for the question is whether the Board can assess property which, by law, is not subject to taxation. If the property—that is, the capital stock—had been subject to taxation, then the question as to whether the value placed upon it by the Board is final and conclusive would be presented, but as the confessed allegations show that the capital stock was not subject to taxation the Board had no authority over it, since it is clear that the Board can not make property of any kind subject to assessment, when there is no statute conferring that authority upon it.

The foregoing case is closely analogous to that at bar. Here we show, as there, that “there is no property

subject to taxation," and the property is, as there, the "capital stock." We say that over this property, under the evidence made as to its character, that "the Board had no authority."

It may be said that there is an Indiana statute authorizing such assessment, but as this Court said in *Allen v. B. & O. R. R. Co.*, *post* (pp. 84-85) "an unconstitutional law will be treated by courts as null and void."

It would seem that a plaintiff who has a right to go into the federal courts, because of diversity of citizenship or of a federal question being involved, should be allowed the remedy of injunction whenever, under the facts stated in his bill, it would be sustained in the State courts, as would seem to be the case in Indiana, under the authority last quoted from.

The case of *Shelton v. Platt*, 139 U. S. 591, (35 L. ed. 273) is to be clearly distinguished from the case at bar in many particulars, which are easily apparent upon an examination of the opinion.

The notable and conspicuous matter, however, to which we desire to especially direct the attention of the Court, is the broadly different statutory condition existing in Tennessee from that which exists in Indiana. The Tennessee Statute, Sections 1 and 2 of the Act of 1873, set out in the statement of the case in *Shelton v. Platt*, shows a plain, direct, unitary and simple statutory remedy in *all* cases of unlawful taxation, and which covers *all* such taxes and enables *all* such questions to be determined in a single proceeding.

The statutes of the State of Indiana, quoted in appellants' brief, do not, as those of Tennessee do, afford the single, simple, plain and adequate remedy which is necessary to oust equity of its jurisdiction.

This point will not be argued further, as a mere comparison of the statutes in question, which can con-

veniently be had from appellants' brief and the report of *Shelton v. Platt* will make it plain.

In *Jones, Treas. v. Gas Co.* 135 Ind. 595, cited by appellants at p. 38 of their brief, the Indiana Supreme Court, on p. 599, say:

This case was tried upon the theory that the appellee was entitled to relief if it succeeded in showing that its whole capital was invested in tangible property returned for taxation, and that its capital stock did not, in fact, exceed in value such property. The theory is erroneous. Had this been a trial, on appeal, to a tribunal authorized to correct the assessment, the theory would have been correct, but, in a collateral proceeding like this, it was necessary to go farther and show that *some fact existed which rendered the action of the board of equalization void.*

Unless its action was void, the collection of the tax levied upon its assessment can not be enjoined.

This shows clearly that in Indiana if any fact can be shown on the trial of a suit in equity which renders the taxation *void* the collection of the tax may be enjoined.

If the law in Indiana, as declared by its Supreme Court, has any bearing upon this case, it establishes (the tax being shown to be void because levied upon "patent rights") that the taxation might properly be enjoined.

The "*Dows Case*", 11 Wall. 108, is cited (appellants' brief, p. 17) upon the point that a bill to restrain the collection of a tax will not lie unless the case is brought within some acknowledged head of equity jurisdiction. Appellee sees no occasion to controvert the legal proposition thus laid down, and calls attention to the fact that this Court cited approvingly in that case *Heywood v. Buffalo*, 14 N. Y. 534, to the effect that the rule that a court of equity will not entertain an action by the party aggrieved, for relief against erroneous or illegal assess-

ment, is subject to *three exceptions*, which this Court stated as follows:

Where the enforcement of the assessment would lead to a multiplicity of suits, or where it would produce irreparable injury, or **where the assessment on the face of the proceedings was valid, and extrinsic evidence would be required to show its invalidity.** Whenever a case was made by the pleadings falling within either of these exceptions, the court said that equity would interfere to arrest the excessive litigation, or prevent the irreparable injury, or remove the cloud upon the title, but would not interfere where none of these circumstances existed.

Appellants, at p. 83 of their brief, say:

The assessment complained of in this case was made against the shares of capital stock of an Indiana manufacturing company. It was not made against any patent or patents.

And, after discussing the tax statements, on p. 84 say:

Therefore, no assessment whatever was placed against the patents *co nomine*, for either of the years 1892, 1893, 1894 or 1895.

In this view of the case the assessment "on the face of the proceedings" seemed to be entirely valid and regular because it was authorized and required by the statutes of the State of Indiana, and by the forms printed in pursuance and in accordance with said statutes. It required "extrinsic evidence to show its invalidity". Until the fact that patents issued under the Constitution and laws of the United States were the sole basis for the stock was made evident, there was nothing, if appellants' contention is correct, to show that the assessment was not a proper one.

Under the authority above cited, therefore, this equitable proceeding is clearly authorized.

In nearly all of the cases cited by appellants' counsel the question of *value* seems to be the leading and con-

trolling one. In this case there is no such question. The real issue is whether or not the federal law renders the assessment under the Indiana law wholly void.

As was lately well said by the Supreme Court of Texas:

The wrong did not consist in a failure to follow the directions of the law, but in obeying its unconstitutional requirements.

Hutcheson v. Storrle, 51 S. W. Rep. 848-852.

INTERSTATE COMMERCE ANALOGIES.

There is another subject in which the respective powers and duties of the Federal Government and the State Governments have been drawn in question, and in respect to which this Court has been repeatedly called upon to define the law. This subject is interstate commerce, and many of the questions which have arisen in such litigation bear a strong analogy to those now under consideration.

In the case of *Robbins v. Taxing District of Shelby County*, 120 U. S. 489, (30 L. ed. 694) this Court said:

Certain principles have been already established by the decisions of this Court which will conduct us to a satisfactory decision. Among those principles are the following:

2. Another established doctrine of this Court is that, where the power of Congress to regulate is exclusive, the failure of Congress to make express regulations indicates its will that the subject shall be left free from any restrictions or impositions;

3. It is also an established principle, as already indicated, that the only way in which commerce between the States can be legitimately affected by State laws is when, by virtue of its *police power*, and its jurisdiction over persons and property within its limits, a State provides for

—various matters not necessary here to enumerate.

Applying these principles to the present case, it may be said that the power of Congress respecting patents

under the Constitution has been exercised, and it having failed "to make express regulations" respecting the taxation of patents, "indicates its will that the subject shall be left free from any restrictions or impositions"; subject, nevertheless, of course, to the *police power* of the States, as held by this Court in *Patterson v. Kentucky supra*.

In the case of *Philadelphia & Southern Mail Steamship Co. v. Pennsylvania*, 122 U. S. 326, (30 L. ed. 1200), this Court in further discussion of these questions used the following language:

In view of the decisions of this Court, it cannot be pretended that the State could constitutionally regulate or interfere with that commerce itself. But taxing is one of the forms of regulation. It is one of the *principal* forms. Taxing the transportation, either by its tonnage, or its distance, or by the number of trips performed, or in any other way, would certainly be a regulation of the commerce, a restriction upon it, a burden upon it. Clearly, this could not be done by the State without interfering with the power of Congress. Foreign commerce has been fully regulated by Congress, and any regulations imposed by the States upon that branch of commerce would be a palpable interference. If Congress has not made any express regulations with regard to interstate commerce, *its inaction*, as we have often held, *is equivalent to a declaration that it shall be free, in all cases where its power is exclusive; and its power is necessarily exclusive whenever the subject matter is national in its character and properly admits of only one uniform system.*

Nor does it make any difference whether such commerce is carried on by individuals or corporations.

The corporate franchises, the property, the business, the income of corporations created by a

State may undoubtedly be taxed by the State; but *in imposing such taxes care should be taken not to interfere with or hamper, directly or by indirection, interstate or foreign commerce, or any other matter exclusively within the jurisdiction of the Federal Government.*

In *Leloup v. Port of Mobile*, 127 U. S. 640, (32 L. ed. 311) this Court stated that "upon the fairest and most just construction of the Constitution"

no State has the right to lay a tax on interstate commerce in any form, whether by way of duties laid on the transportation of the subjects of that commerce, or on the receipts derived from that transportation, or on the occupation or business of carrying it on, and the reason is that such taxation is a burden on that commerce, and amounts to a regulation of it, which belongs solely to Congress.

So we say that a State has no right to lay a tax on patent rights "in any form", whether directly upon the patents themselves, as required by the Indiana statute, or upon the stock of a corporation issued for and representing such patents, for the reason "that such taxation is a burden" upon the federal franchise granted by the Government of the United States, "and amounts to a regulation of it, which belongs solely to Congress".

In *Crutcher v. Commonwealth of Kentucky*, 141 U. S. 47, (35 L. ed. 649) this Court said:

We have repeatedly decided that a state law is unconstitutional and void which requires a party to take out a license for carrying on interstate commerce, no matter how specious the pretext may be for imposing it.

We say here "that a state law is unconstitutional and void" which requires a party to pay a tax on a patent right, directly or indirectly, "no matter how specious the pretext may be for imposing it."

After each of the statements above quoted from the decisions of this Court, a long list of authorities is given in the opinion. We deem it unnecessary to carry the argument further upon these propositions, or to call the Court's attention to further authorities relating thereto.

POWER OF THE STATE.

The tenor of portions of appellants' argument seems to be to the effect that the State has the right to tax its own corporations as it pleases, and thus that a different rule may be applied to corporations, in cases like that at bar, from the rule which would govern such cases where individuals are concerned. It is readily conceded that corporations are in some respects different from individuals; and it is equally true, perhaps, that the legislature might enact measures under which the distinction should be still more marked. But no statute has been called to our attention limiting the rights of corporations in respect to the ownership of this class of property. Under what authority, therefore, or for what legal reason, are we to distinguish between the right of ownership in a natural person, and the same right in a legal person, when and in cases where no law exists for the distinction?

It is not contended that there is any statutory distinction applicable to this case. Indiana has imposed no such distinctions or restrictions upon its corporations. This corporation must therefore be held to have the unrestricted right to purchase and own Letters Patent, the same as an individual would have—and to have the same rights under the patents which it may own as an individual would have—and to have no burdens because of such ownership that an individual would not have.

It may, perhaps, be said that a State has plenary power over its domestic corporations; that a State may

refuse to create any corporations; or may refuse to create them except for certain purposes; or may refuse them the power to own certain kinds of property. But a State has not the power to make patents taxable, either directly or indirectly;—nor can it, as a matter of law, make that lawful when attempted by indirect methods which is unlawful when attempted by direct methods.

The State of Indiana has *not* passed a law that a manufacturing corporation shall not own patent rights, nor can it, indirectly, under the guise of taxing corporate stock, tax those patent rights. If the State of Indiana shall hereafter provide that none of its corporations shall own patents, a different question may be presented, but “sufficient unto the day is the evil thereof.” That question is not now before us.

HOW THE STOCK WAS PAID UP.

On pp. 49 to 51 of appellants’ brief the contention is that the company must be held to have a fully paid-up stock, the inference which is drawn being that it must also be of *taxable value* to the amount of its face.

Avoiding a *direct* charge of fraud in the matter, which was incautiously made when the case was before the Court of Appeals, a quotation from the Indiana case of *Cloze v. Brown*, 150 Ind. 185, is used in such a manner as to give the *impression* of fraud.

It is true that the returns for taxation show that the stock was fully paid up. But paid up in what? The uncontroverted evidence is that it was paid up in *patents*. In the early days of the corporation, continuing up to about the time this suit was brought, it had some bad luck, and the valuation of its patents was so low that the stock was regarded as only worth 10 cents on the dollar. In recent times the corporation has had some profitable royalty contracts, and its income has grown because of the increased use of its patents, so that its

stock, which represents the patents, is probably worth par or better today. As the Court must well know, patents are valuable or not according to whether or not profitable use can be made of them. If the income from a patent is but, say, \$500 a year, remembering that the life of a patent is only seventeen years, its total value, at the most, is $\$500 \times 17$ minus a discount, at current money rates, sufficient to reduce the sum to "its present value"—as an actuary would say. When the income grows to \$5,000 per year the value of the patent has become multiplied by 10, deducting the proportionate part of the term of 17 years which has elapsed; and when the income grows to \$50,000 per year the same rule will apply, and the patent becomes proportionally more valuable.

An individual owner of a patent has never been taxed, so far as counsel for appellee is aware, upon the patent which he owned. Joint owners or co-partners may own a patent; and they are no more to be taxed upon their undivided interests than a single owner. If the owners of a patent are numerous it is nothing strange that they should organize into a corporation, assign their patents to the corporation, and receive *stock* of the corporation, in proportion to their interests in such patents, in exchange therefor. Such an organization, as is well known, is considered more convenient than a numerous partnership. But the value of the patents has not been multiplied, nor is there any difference in value or character between the ownership, for example, of a one-tenth interest in a patent and the ownership of 10 per cent. of the stock of a corporation organized to own the patent.

If there is anything in the contention of appellants in this matter, it is, when reduced to the last analysis, that the patents were *overvalued* when the corporation was first formed. But what bearing has that fact, if it be a fact, upon the present controversy? No credi-

tor, or even stockholder, is complaining. If the organizers of appellee overvalued their patents, it was merely, so far as anything here involved was concerned, a kind of harmless amusement—a sort of Col. Sellers way of looking at things—which, however it may offend appellants' taste, or jar upon their sense of the proprieties, is certainly not such an act as ought to subject appellee to legal pains and penalties.

May not parties in good faith and among themselves fix the nominal value of their own property at any price that pleases them? What harm has been done? It is not pretended that any human being was ever harmed, misled, or lost a dollar because of this or any transaction in which appellee was ever concerned.

And even let us suppose, although there is no evidence to support such a contention, that appellee's stockholders failed to comply with the Indiana statute respecting the payment of stock subscriptions, how did appellants become vested with jurisdiction of such a matter? They were not, individually or collectively, a proper tribunal to determine the question, nor did they adopt a procedure appropriate for such a determination, even had the matter been within their jurisdiction.

As to the value of the patents in proportion to the value of the stock, the *assessor* fixed the value of the patents, as listed in the return, as has heretofore been stated. Said patents may or may not be worth \$20,000, or \$25,000, or \$360,000, or any intermediate or other sum. Appraisements of patents from the nature of things must vary as widely as the differences in men's minds. The question of whether or not these particular patents were *as* valuable, or *more* valuable, or *less* valuable, than the assessment, is not a proper one for consideration here.

Mr. Sharpe was cross-examined as to this question of value, and while the question is not a material or pertinent one, it is somewhat interesting. This testimony is found on p. 30 of printed transcript, X-Qs. 81 to 85, inclusive. No such matter having been inquired about on the examination-in-chief, if the testimony is admitted at all, appellants must be held to have made the witness their own.

As showing how the stock of Indiana corporations ought to be paid up, appellants, at p. 50 of their brief, cite and quote from *Clow v. Brown, supra*. This quotation does not fairly show the character of the case. An examination of the complete case shows that it is one of that long line of decisions, in cases brought by creditors of insolvent corporations, wherein it is held:

that unpaid subscriptions to the capital stock of a corporation constitute a trust fund for the benefit of creditors.

In said case \$200,000 of capital stock had been issued and turned over to contractors and promoters without the payment—or pretense of payment—of a cent of value of any kind, the transfer being, as the Court designated it, “a mere gratuity”.

In that case, however, the Court said:

No doubt, the appellees, constituting, as they did, the whole company, might, as to themselves and the corporation, make a gift of the stock. They could not complain of their own act. But the representation of this stock to the world as paid up, when the payment made was a mere fiction, was nothing short of an imposition on all those who might deal with the company in good faith.

In the present case there are no unpaid stock subscriptions, nor are there any complaining creditors. The company still has the *identical* property for which the stock was issued, and the value of one is necessarily the

value of the other. We challenge a critical examination of every word of the record in this case, and defy the production or discovery of any evidence showing any lack of good faith in the transactions of appellee.

In this case the stock and the patents are interchangeable terms, and each is the equivalent in value of the other.

At a previous stage in this case appellants cited a long list of these authorities in support of their then direct charge of fraud.

One of these cases, —viz.: *Crawford v. Rohrer*, 59 Md. 599—was a case where the stock had not been fully paid for, and the company having become insolvent, creditors were suing to recover their debts. In this case *patents had formed a large part of the consideration paid for the stock when issued, and this transaction was not disturbed by the Court*, but judgment only went for a balance shown to be due from those who had agreed to pay *cash* for their stock. It is respectfully submitted that this is an authority *for*, rather than *against*, appellee, if it has any bearing upon the present controversy.

Where is there any support in such authorities for an attempt to tax a corporation on its stock, when the argument is that the property for which such stock was issued is only worth \$25,000 although the face of the stock is \$360,000? Is it anywhere intimated in any of them that there would be any justice in *taxing* the corporation illegally, or even on an excessive valuation? If so, I have failed to discover it.

In some of these cases real estate was the property under consideration.

Disregarding for the moment the difference between real estate, *which can be closely appraised*, and patents, the nominal value of which depends wholly upon whether the owners are optimists or pessimists, we find

in the case at bar neither creditors nor stockholders asking any relief, but taxation-mad petty tax officers, seeking to plunder a corporation by unlawful taxes, on the plea, among others, that the non-taxable property given for the stock was overvalued.

Finally, on this subject, permit me to say, that appellee *did* pay \$360,000 of its stock for the "patent-rights". And there was no "fraud" about it—either upon the law or upon the stockholders. Everybody connected with the company knew exactly what they were doing, and they all, so far as any evidence in this case shows, were then, and have ever since remained, entirely satisfied with the transaction. No creditor or stockholder of the company is finding any fault. We deny that there was any "simulated subscriptions" or "sham payments"; and we deny, with equal emphasis, that it was any of appellants' business if there had been,—as it could not have changed the actual value of taxables;—and, if it *were* their business, they have made no such issue in this case. The payments of the stock subscriptions were full payments—but they were made in *patents* and *not* in money. No taxables were juggled out of sight in the transaction, or other venality committed, as appellants' counsel would have the Court believe. The officers of my client are honorable men, who do not commit frauds. And they ought not to be—even inferentially—charged with fraud, or the attempt made to brand them with fraud, in a case where no such issue is raised by the pleadings, and no evidence has been given to support such a charge.

And again: Can it be said, as a matter of equity, that the stockholders of this company should be mulcted in unlawful taxes because it is questioned whether the patents owned by said company are or have been as valu-

able as they were claimed to be when they were assigned to the corporation in exchange for its stock.

PRIVATE SALES OF STOCK.

Certain private sales of stock were (improperly) inquired about in the cross-examination of Mr. Sharpe. These are tabulated at p. 61 of appellants' brief. This seems to be irrelevant.

What difference does it make how, when, where, or to whom, *individual* stockholders have sold or traded their stock, or what the consideration might have been which they received therefor? The *corporation* itself is the party to *this* cause; and the individual stockholders are *not* parties.

Comment is made upon the fact that \$54,930 par value of appellee's stock is now "held by shareholders other than the inventors of the patents". Appellee's counsel is unable to discern what this has to do with the issues of this case. It is quite possible that *all* the stock may be held by persons "other than the inventors"; but if so, the inventors hold the money or other tangible property which was paid for it, and are—or, at least, ought to be—taxed on such holdings. The stock still continues to be the representative of the patents for which it was issued;—and appellee neither can control; is responsible for; or has any particular interest in, the sales or transfers of its stock from time to time. In these various trades *between individuals* it can not even be pretended that the taxing powers have lost anything. The stock representing the patents was not taxable in the hands of the original owner; and the money or other property *was* taxable in the hands of the stock purchaser when the transfer was made. Then the fellow who had the *stock* got money or property on which *he* thereafter had to pay taxes, and the fellow who had had the money or property

got the stock, *representing a share in these patents*, and which as before stated, was *not taxable*. It is difficult to perceive how this harmed any one. The *stock* was the *same stock*; the *individuals* holding it *changed*.

The corporation is assessable on the taxable property which it owns, and not on the patents which it owns, and the stock is clearly shown to be only the representative of the patents.

It is stated at p. 64, that the great profits of manufacturing companies "comes from manufacturing articles under patents." It is readily conceded that a corporation owning meritorious patents has a greater *earning power* because of that fact; but that the ownership of patents at all affects the "value" of their taxable property, is not true, further than that the increased earnings when received are taxable, and to that extent the taxing power is benefited.

And this is also an answer to the argument that large *values* would escape taxation. There is no intrinsic value in a patent, and, it being a federal franchise, its earning or income-producing value is not taxable, although the income or earnings, after they have been received, are.

SHOULD STOCK BE TAXED TO FULL VALUE.

The argument is that the State may tax capital stock up to its full market or actual value. Can this be true in all cases? Let us illustrate: Suppose the corporation owns *real estate* in other States where it is taxed. Certainly such ownership is an element of value to the stock, but if the stock could be fully taxed where the corporation has its home, then it would be subject to double taxation. This, of course, is not allowable. Indeed, in one of appellants' principal authorities (*Hyland et al. v. Central Iron & Steel Co.*, 129 Ind. 68), the Court says:

It seems quite clear that no taxpayer can be taxed twice upon the same property, and so the authorities declare.

citing several authorities.

And again, as is frequently actually the case, suppose a manufacturing company has branches in several States other than the State in which it is incorporated and does business, and owns large amounts of personal property which are kept at such branches, and are there taxed. Is it possible, although half or more of the corporate assets are distributed throughout other States, where they bear their just and proper burden of taxation, that still the corporation must be taxed on the full value of its stock in the State where it is incorporated and in which its principal office is located?

These illustrations show the utter fallacy and absurdity of the contention that the corporation must be taxed for the full market or actual value of its capital stock.

And, let us not forget, a *patent* covers the *entire* United States and Territories—from the St. John to the Rio Grande—from Cape Cod to the Golden Gate—from Alaska to the Mexican boundary—as well as the territory administered by “The Division of Insular Affairs.” This being true, what justice would there be, even were it lawful, to tax the entire value within and for the benefit of, a single State?

Beginning on p. 61, of their brief appellants make a curious argument based upon the collection and disbursement of considerable sums of money in the operation of the company's affairs. Is it to be considered that a party is to be taxed upon his *expenses*? Is a company to be taxed because some of its stockholders have sold their shares to other persons? Is the *business ability* of the officers and employes of a corporation taxable? All the

proceeds of the business *are* taxable in the hands where they are found on tax day. If the company *retains* its income, it is in the form of money or other tangible property, and the *company* must pay the tax. If it *distributes* its income in dividends, then the *stockholders* must individually pay the tax. The *income* from a patent is as taxable as the income from anything else; but neither the thing—the *patent* itself—nor *stock which merely represents it*, can be taxable,—for the reasons already given. Nor, let it be said, do the conditions here furnish any excuse for the complaint that appellee does not contribute its fair share of the public revenues, or that it makes unequal upon the citizens of a State the burdens of taxation. On the contrary, a corporation like this appellee, which owns valuable patents which are used throughout the length and breadth of the country, and which draw to its home office a considerable income from royalties paid by manufacturers in other and distant States, and distributes the funds so collected among stockholders who are citizens of its home State, helps in a large and beneficent measure to furnish taxables which may be levied upon to furnish means to defray the expenses of maintaining the Government. If the contrary doctrine should be held, corporations owning patents as valuable as the officers of this corporation believe their patents to be, would be driven to abandon their corporate home in Indiana, and go where the laws are more friendly, and where the taxing officers have a better appreciation of the benefits such an enterprise confers upon the community in which it is located.

So far as appellee's counsel knows *brains* have never been listed as taxables—and should they be, or should it be held that they impliedly are, it would seem that they should be taxed to the *owner* rather than the *hirer*.

If appellants' contentions in this case can prevail, then may invention and enterprise well be stayed.

It is true that appellee is the owner of a "franchise"—a *patent*—granted by the Government of the United States. If it shall succeed in maintaining and enforcing its rights thereunder, then this patent franchise will, as it believes, be of very large value. If it shall fail, said franchise will be absolutely worthless. In the former case it is prosperous, and it is likely to receive a large income,—*which income will be taxable*. In the latter case it is insolvent, and will become defunct, when it will have nothing to tax.

The justice, therefore, as well as the law of the case, is thought to be clearly with the appellee.

The value of a patent is measured by the income from it. It has no intrinsic value. Its value is solely an earning or income value, and ends with its term. The income when earned and received is taxable,—be the amount large or small,—and no other taxation in any way relating to a patent is lawful.

THE DISTINCTION BETWEEN PATENTS AND PATENTED ARTICLES.

Certain quotations from *Patterson v. Kentucky*, *supra*, will serve to bring into strong relief the distinction between the powers reserved to the States as police powers and the powers denied to the States by the Federal Constitution and laws concerning patents.

This case was heard upon writ of error to the Kentucky Court of Appeals, which had affirmed the judgment of an inferior State Court, in which upon indictment and trial a fine of \$250 was imposed upon plaintiff in error for a violation of certain provisions of a Kentucky statute regulating the inspection and gauging of oils and fluids such as petroleum, and condemning as unsafe for

illuminating purposes such as ignite or permanently burn below a temperature of 130° Fahr. The oil, which was the subject-matter of the sale complained of, was also the subject of certain Letters Patent of the United States, and the plaintiff in error claimed the right to sell it, therefore, notwithstanding the State statutory police regulation above recited.

This Court held that such a construction of the Constitution and laws of the United States was inadmissible, and said:

By the settled doctrines of this Court, the police power extends, at least, to the protection of the lives, the health and the property of the community against the injurious exercise by any citizen of his own rights. State legislation, *strictly and legitimately for police purposes*, does not, in the sense of the Constitution, necessarily intrench upon any authority which has been confided, expressly or by necessary implication, to the National Government. The Kentucky statute under examination manifestly belongs to that class of legislation.

It is not to be supposed that Congress intended to authorize or regulate the sale, within a State, of *tangible* personal property which the State declares to be unfit and unsafe for use, and by statute has prohibited from being sold or offered for sale within its limits.

This court has never hesitated, by the most rigid rules of construction to guard the commercial power of Congress against encroachment in the form or under the guise of State regulations established for the purpose and with the effect of destroying or impairing rights secured by the federal Constitution. It has, nevertheless, with marked distinctness and uniformity, recognized the necessity, growing out of the fundamental conditions of civil society, of upholding State police regulations enacted in good faith,

and which had appropriate and direct connection with that protection to life, health and property which each State owes to its citizens.

The right which the patent primarily secures is the exclusive right in the discovery, which is an *incorporeal* right, or, in the language of Lord Mansfield, in *Millar v. Taylor*, 4 Burr 2303, "a property in notion," which "has no corporeal tangible substance." *The enjoyment of that incorporeal right may be secured and protected by national authority against all hostile State legislation; but the tangible property which comes into existence by the application of the discovery is not beyond the control as to its use of State legislation, simply because the inventor acquires a monopoly in the discovery.*

In the case of *Allen v. B. & O. R. R. Co.*, 114 U. S. 311, (29 L. ed. 200), this Court, quoting from *Board of Liquidation v. McComb*, 92 U. S. 531, declared it to be well settled that, when a plain official duty, requiring no exercise of discretion, is to be performed, and performance is refused, any person who will sustain personal injury by such refusal may have a *mandamus* to compel its performance; and when such duty is threatened to be violated by some positive official act any person who will sustain personal injury thereby, for which adequate compensation cannot be had at law, may have an injunction to prevent it. In such cases, the writs of *mandamus* and *injunction* are somewhat correlative to each other. In either case, if the officer plead the authority of an unconstitutional law for the non-performance or violation of his duty, it will not prevent the issuing of the writ. ***An unconstitutional law will be treated by the courts as null and void.***

This Court long ago pointed out the distinction between the taxation of a patented article and the taxation of the patent itself, and in dealing with the question Mr. Chief Justice TANEY, speaking for the Court, said:

The distinction is a plain one. The franchise which the patent grants, consists altogether in the right to exclude everyone from making, using or vending the thing patented, without the permission of the patentee. This is all that he obtains by the patent. And when he sells the exclusive privilege of making or vending it for use in a particular place, the purchaser buys a portion of the franchise which the patent confers. He obtains a share in the monopoly, and that monopoly is derived from, and exercised under, the protection of the United States.

But the purchaser of the implement or machine for the purpose of using it in the ordinary pursuits of life, stands on different ground. In using it, he exercises no rights created by the Act of Congress, nor does he derive title to it by virtue of the franchise or exclusive privilege granted to the patentee.

And when the machine passes to the hands of the purchaser, it is no longer within the limits of the monopoly. It passes outside of it, and is no longer under the protection of the Act of Congress.

The implement or machine becomes his private, individual property, not protected by the laws of the United States, but by the laws of the State in which it is situated. Like other individual property, it is *then* subject to State taxation; and from the great number of patented articles now in use, they no doubt, in some of the States, form no inconsiderable portion of its taxable property.

Bloomer v. McQuewan et al., 14 How. 539. (14 L. ed. 532).

The Supreme Court of the State of Michigan, speaking by Judge COOLEY, has expressly recognized and declared that:

Any State legislation which undertakes to limit or restrict in any manner the privilege which the Let-

ters Patent confer is an *invasion* of the sphere of national authority, and therefore *void*.

People v. Russell, 49 Mich. 617.

In this case they cited with approval *Cranson v. Smith*, 37 Mich., 309, in which it was said:

In those cases where the congressional power is lawfully exercised, it is *supreme*.

The Constitution of the United States not only allows but favors the special protection of inventors. The measure of that protection, and its conditions, can not be fixed by any power but Congress, and the remedy for abuses or defects in the legislation of that body must be found in its own revision of its own laws. It is not competent for State statutes to deal with them or to revise the national policy.

HOW PATENTS ARE "PROTECTED."

At pp. 90-91 of their brief appellants quote from *Crown Cork & Seal Co. v. Maryland* to the effect that "patent rights are personal property and entitled to the same protection as other property", citing *Cammeyer v. Newton*, 94 U. S. 225, (24 L. ed. 72).

In *Cammeyer v. Newton* this Court used the following language:

Holders of valid letters patent enjoy, by virtue of the same, the exclusive right and liberty of making and using the invention therein secured, and of vending the same to others to be used, as provided by the act of Congress; and the rule of law is well settled, that an invention so secured is property in the holder of the patent, and that as such the right of the holder is as much entitled to protection as any other property, during the term for which the franchise or the exclusive right or privilege is granted. *Seymour v. Osborne*, 11 Wall. 516, (20 L. ed. 33), 16 Stat. at L. 201.

Section 22 of the Patent Act provides that every patent shall "contain a grant to the patentee, his heirs and assigns, for the term of seventeen years, of the exclusive right to make, use and vend the said invention or discovery throughout the United States." 16 Stat. at L. 201.

Agents of the public have no more right to take such private property than other individuals under that provision, as it contains no exception warranting any such invasion of the private rights of individuals. Conclusive support to that proposition is found in a recent decision of this Court, in which it is held that the government cannot, after the patent is issued, make use of the improvement, any more than a private individual, without license of the inventor or making him compensation. *U. S. v. Burns*, 12 Wall. 246, (20 L. ed. 338).

In *Scymour v. Osborne*, cited in *Cammeyer v. Newton*, the Court stated the matter as follows:

Inventions secured by letters patent are property in the holder of the patent, and as such are as much entitled to protection as any other property, consisting of a franchise, during the term for which the franchise or the exclusive right is granted.

Letters patent are not to be regarded as monopolies, created by the executive authority at the expense and to the prejudice of all the community except the persons therein named as patentees, but as *public franchises* granted to the inventors of new and useful improvements for the purpose of securing to them, as such inventors, for the limited term therein mentioned, the exclusive right and liberty to make and use and vend to others to be used their own inventions, as tending to promote the progress of science and the useful arts, and as matter of compensation to the inventors for their labor, toil and expense in making the inventions, and reducing the same to practice for the public benefit, as contemplated by the Constitution and sanctioned by the laws of Congress.

But how is this protection to be had? The Statutes of the United States, Sec. 629, say that the Circuit Courts of the United States shall have jurisdiction:

Ninth. Of all suits at law or in equity arising under the patent or copyright laws of the United States.

And Sec. 711 says:

Sec. 711. The jurisdiction vested in the Courts of the United States in the cases and proceedings hereinafter mentioned, shall be *exclusive* of the courts of the several States:

Fifth. Of all cases arising under the patent-right or copy-right laws of the United States.

As a matter of fact, the *protection* to patent property which the owners of such property invoke is always that provided for by the patent laws of the United States. No State can, will, or even pretends to, in any manner protect patent rights. And if a State protects patented *articles*, it protects them *as articles* merely, and also *taxes* them, as it has a right to do.

WHAT THE RETURNS SHOW.

While these questions seem to have no special bearing upon the controversy here, we now call attention to the disingenuousness of the discussion of the schedules found on pp. 55-60 inclusive of appellants' brief.

Near the top of p. 55 appellants call attention to the fact that the return for the year 1893 showed \$33,900 of personal property, utterly ignoring the fact that this includes the returned valuation of \$25,000 for the patents, leaving a balance of only \$8,900 of taxable property.

It is true, as stated further down on said p. 55, that the company had credits of \$24,744. But this is so stated as to attempt to obscure the fact that said credits were more than offset by \$25,000 of debts, which, under

the statutes of Indiana, are lawfully deductible from credits. The schedules themselves show this, and these schedules are prescribed by, embodied in and form part of the statutes of the State of Indiana relating to taxation.

These blank forms of schedule are provided for and embodied in Section 53 of the Tax Law of March 6, 1891, being Section 8458 of the revised statutes of 1894, as called to attention in appellants' brief.

The matter in question as to the year 1893 is printed on p. 37 of the transcript of record.

The matter on p. 52 of transcript, called to attention, shows that the indebtedness in 1895 was \$39,863 *more* than the total assets, excepting patent rights.

Of the \$32,645 returned in 1894, (transcript, pp. 46-49), \$25,000 was for patents, leaving a balance of \$7,645. This year the company had \$15,491 of credits and \$50,000 of debts.

In 1895, (transcript, pp. 53-57), the total amount returned was \$10,137. This did not include credits of \$22,891, (p. 53), which were more than twice offset by \$50,000 of debts, (p. 54). This year the company declined to include the patents, but answer (transcript, p. 55): "We are advised that patent rights are not taxable, and, therefore, decline to state any value for them". But the deputy assessor appended a foot note showing the valuation, which, however, of course is not included in the footing of the return.

"EO NOMINE."

At several places in their brief counsel for appellants refer to patents and franchises "*eo nomine*," as though there were some distinction to be drawn by varying nomenclature.

"A rose by any other name would smell as sweet," and we have no apprehensions that this Court will

indulge in any such hair-splitting distinctions. The decisions quoted from at pp. 31-33, *ante*, seem to be conclusive that substance and not mere verbal form is regarded by this Court.

TAXABILITY OF FRANCHISES.

The taxability of "franchises" is sought to be established, and authorities are cited supportive of that proposition. Appellee's counsel deems it no part of his duty to either affirm or deny this proposition generally, for he conceives it to have no proper bearing upon the issues in this case. It may well be that many classes of franchises are taxable. It is notorious that such franchises as are possessed by street railway companies, gas companies, and the like, are of enormous value. In the organization of such companies to operate in cities of importance, an enormous amount of capital must be raised merely to acquire such franchises. In other places where franchises of this character were obtained many years ago for small amounts, recent sales have demonstrated their greatly increased value. These are exclusively municipal affairs, and are under control of State and municipal laws.

Most likely such or similar franchises were in the minds of the court in most of the cases cited by counsel for appellants; or in some cases, perhaps, franchises granted by the States themselves, which, so long as there is no conflict with federal laws, may (so far as any question involved in this case is concerned) be conceded to be within State control and subject to any burdens which may be imposed by the State. But it must be conceded by appellants that where the so-called plenary power of the States comes in conflict with the really plenary power of the United States, then the former must yield; and it is not believed—indeed, the authorities cited by counsel for appellee in his original brief are overwhelm-

ingly to the contrary—that franchises granted by the Government of the United States have ever been successfully subjected to taxation. Should the time arrive when they, without the express permission of the general Government, may be,—then, indeed, States' rights and nullification will hold dominant sway, and the powers of the Federal Government become a myth.

NULLIFICATION.

We have already, on pp. 17 and 18 of this brief, discussed the proposition that a patent is a contract, and have given some authorities upon that point. If this be true, we are confronted by the contention that these appellants are in some way vested with the power to nullify or impair this contract made on behalf of all the people by the Government. Let us examine the question a little further then, and see where, if carried to its logical conclusion, such a contention will lead us.

The Constitution of the United States, Section 10, Article I, says:

No State shall pass
any law impairing the obli-
gation of contracts.

“Law” is a rule of action established by authority.

A rule of administrative procedure uniformly acted on by State officials is a law equally with the statute—differing only in degree—not in kind.

In the present case there is both a statute and an administrative rule, which rule, whatever may be said or pretended to the contrary, is based upon said statute.

The contract in question is of a high character,—being by no less a party than the people of this great nation, acting in their sovereign capacity, who have solemnly granted the rights in question for a consideration.

One of the questions here raised is, shall this State statute and this administrative rule be permitted to impair the obligation of this contract by imposing the additional obligations not called for by the contract itself, or by the Constitution or the statute of the United States under which the contract was entered into?

The second paragraph, Article VI, of the Constitution says:

This Constitution, and the laws of the United States which shall be made in pursuance thereof, . . . shall be the Supreme Law of the land; and the Judges in every State shall be bound thereby, anything in the Constitution or laws of any State to the contrary notwithstanding.

Possibly in this matter we are traveling in a circle; but the proposition may, perhaps, be lent a new emphasis by the inquiry: Is a State or County Board of taxing officers to be permitted to nullify (or annex any conditions to) a contract made by the whole people of this great country through their duly chosen and legally authorized representatives?

No Court has ever decided the affirmative of the proposition which appellants' contention resolves itself into. It remained for the predecessor of my present opponent, who, by the chance of politics, became the Attorney-General of the State of Indiana, and who by means of his aggressive manners and egoistic personality succeeded in dominating our rather mild and timid Governor, and other State officials, to seriously contend for a proposition so absurd.

But no one in this country, however exalted in station or illustrious in character, is above the law. No State official can, in assuming the name of the State, shelter himself behind her sovereign immunity.

Southern Ry. Co. v. North Carolina Ry. Co.,
81 Fed. Rep. 595.

So here we are, and the result is that this Court is troubled to decide a question which it seems to us ought never to have been raised.

It has been said that the Government of the United States has no interest in protecting its Letters Patent, or in seeing that its patentees are sustained in their rights thereunder. Startling proposition! That this great Government—"of the people, by the people, for the people"—has no interest in the honest execution of its contracts—because, forsooth, its statutory fees having been paid, under proceedings which resulted in the grant, there is no further direct pecuniary return to the Treasury.

As well might the gentlemen say that this great Court, organized for the purpose of seeing that justice be done, has no interest in the proper determination of such cases brought before it as do not affect your Honors' salaries, or the public revenues.

To these lengths would such a theory, if pursued to its legitimate conclusion, lead us. We protest against anything tending in such a direction.

If we are to be defeated here, let it not be for any such reasons or upon any such grounds. Appellee, at least, will not seek to so demean this case. Believing itself morally as well as legally in the right, it comes here with every confidence that its contentions will be upheld; but should we perchance be mistaken in the law, we feel confident that an adverse decision, if one be rendered, will be because it is found to be the law, and not because this great Government has no regard for the proper execution of its contracts.

A Canadian authority states the matter admirably:

It is universally admitted in practice, and is certainly undeniable in principle, that the granting of Letters-Patent to inventors is not the creation of an

unjust or undesirable monopoly, nor the concession of a privilege by mere gratuitous favor; but a *contract* between the State and the discoverer.

Invention being recognized as a property, and a *contract* having intervened between society and the proprietor for a settlement of rights between them, it follows that unless very serious reasons, deduced from the liberal [literal] interpretation of the terms of the contract, interpose, *the patentee's rights ought to be held as things which are not to be trifled with, as things sacred in fact, confided to the guardianship and to the honor of the State and of the courts.*

Barter v. Smith, 2 Exch. Rep. of Canada, 455,
at pp. 477-478.

While the fact has not much bearing upon the present case, it may be well enough to state that patents are not such monopolies as are opposed to the policy of the law, as is established by the following authorities:

Allen v. Hunter, Fed. Cas. No. 225.

Atlantic Works v. Brady, 107 U. S. 203.

Stevens v. Keating, 2 Webs. Pat. Cas. 181.

WALKER ON Patents, Sec. 152, p. 131.

Scymour v. Osborne, 11 Wall. 516.

CURTIS' Law of Patents, preliminary observations.

WHAT IS BEFORE THIS COURT.

Near the conclusion of his elaborate and highly ingenious brief, the Attorney-General of the State of Indiana propounds the inquiry:

But how is this court going to ascertain from the record the valuation of the patents in question? By what sort of process is the court to ascertain just how much of the \$20,000 assessment in 1892, and of the \$36,000 in 1893, and the \$36,000 assessment in 1894, and again in 1895, is made up of the value of the patent rights held by the company?

And proceeds to tell us again that the defendants have said, under their "oath", that they did not assess these patents at all, thus apparently attempting by endless iteration to cause us to lose sight of the fact that the "oath" in question is a mere voluntary, uncalled-for, extra-judicial proceeding, lugged into the record without warrant or justification. And this, according to appellants' counsel, is not only to take the place of evidence, in despite of the rule established by this court concerning this subject, but is to overthrow evidence regularly taken, in due course, with counsel for both sides present, and where the witnesses were subject to cross-examination. *Ex parte* and unauthorized "oaths", if this contention is successful, will hereafter, it is needless to say, form a convenient and highly desirable substitute (by means of which the danger of having to answer embarrassing questions may be avoided) for the procedure until now regarded as essential to the ends of justice.

It is said that the appellee's president *estimates* the stock as being worth par; but it is equally true that he has testified, in the most positive manner, that its *entire* value resides in the patent rights which it represents. This is the fact. It is the truth. And this truth is as clear from this record as the noonday sun. And elaborate and learned disquisitions upon the law of taxation

can not obscure this truth. It seems wholly unnecessary to follow the Attorney-General through the many and intricate legal ramifications which he has presented to the Court. This case ought not, in appellee's counsel's opinion, to be determined upon any such considerations. The authorities do not, in his opinion, apply. On the contrary, those heretofore cited in this brief apply, if indeed citation of authorities is necessary.

However, answering the Attorney-General's inquiry directly, we say:

This court is not called upon to ascertain the "valuation" at all; or to determine whether or not the patents have any value. The point to be determined is whether or not the patents are taxable at all.

It seems clear that they are not—directly or indirectly—for the reasons which have been given.

Repeating the statement made at the beginning:

The tax complained of is all wrong or all right. If patents are taxable we make no complaint concerning the valuation.

CONCLUSION.

Much of appellee's argument in this case is devoted to traversing propositions, advanced by appellants, which appellee believes to be outside the issues of the case, but which nevertheless have been discussed for the purpose of showing that, even upon such issues, the right and justice of the controversy are with the appellee. If the Court shall adopt appellee's views, it will, of course, ignore these matters in making its decision.

The real issue is, as appellee conceives it: Did appellants tax (or attempt to tax) appellee's patents, directly or indirectly? Appellants' contention is that the tax was levied, not upon appellee's patents, but upon its stock. Appellee replies that its stock was issued for these patents, and for nothing else but the patents, and is merely the *representative* of the patents, and that any tax upon the stock is, therefore, a tax upon the patents—indirect if you will,—but no less truly.

It may be that these taxing officers have a right under some circumstances to tax capital stock. Appellee conceives it to be unnecessary to discuss that question. They may, and probably can, lawfully tax some classes of franchises, but it seems equally unnecessary to discuss that proposition. They cannot, however, tax franchises granted by the Government of the United States in the exercise of its "paramount sovereignty".

No amount of lawfulness of *method* can give vitality to *void proceedings*. No multitude of authorities, being cases where there was a valid foundation for an action, can support a proceeding where there was no lawful foundation. No State statutes; no tribunals established under them; no obscuration of issues, or elaboration of matters not properly in issue; no "ingenuity of argumentation," can ever establish in State or municipal authorities, so long as the Constitution and laws of the United

States remain as they are, the right to tax Letters Patent of the United States.

Nor, so long as courts of justice follow established rules, can any *indirect* method, however skillfully conceived, or however powerfully supported, require, or it is believed will induce, a court, especially a court of equity, to pronounce lawful, that which when attempted by direct methods must be pronounced unlawful.

The matter may be summarized as follows: The taxing officers of the state of Indiana require of appellee a return for taxation in a certain form, and furnish the blank forms for such return. Appellee complied with these requirements, and furnished the returns under oath, showing fully and fairly the property of which it was possessed. That property consisted almost exclusively of "patent rights" or Letters Patent of the United States. The correctness of these returns has never been called in question or disputed or attacked in any way. In addition to these returns, which were introduced in evidence in this case in the Circuit Court, testimony was taken of the present and past officers of the company, and this all showed that the entire capital stock was actually issued for and used in the purchase of these Letters Patent or patent rights, and for nothing else. The testimony further showed that except for the value of these Letters Patent or patent rights appellee would be wholly and hopelessly insolvent, and that it had no other property of any name or description, save the moderate amount which was returned for taxation, and on which as the evidence shows all taxes due had been fully paid.

Notwithstanding all these facts appellants assumed a sheerly capricious right to ignore these duly verified and uncontradicted statements invited by them and received by them in the course of their duty, although

there was before them neither evidence nor fact to the contrary, and to levy and assess upon appellee's stock which was issued for nothing and represented nothing but its Letters Patent or patent rights, the taxation complained of.

This Court, by Mr. Chief Justice MARSHALL, has declared:

All subjects over which the sovereign power of a State extends, are objects of taxation; but those over which it does not extend, are, upon the soundest principles, exempt from taxation. This proposition may almost be pronounced self-evident.

McCulloch v. Maryland, 4 Wheat. 429. [4 L. 607.]

The finding of the Circuit Court for the District of Indiana was as follows:

The Court finds the facts set forth in the complainant's bill of complaint to be true and proved: A decree may be prepared adjudging for plaintiff as prayed and also to embody a perpetual injunction against defendants as prayed, with costs to be taxed against them.

It is respectfully submitted that this finding was correct; that the decree entered under it was a proper one, and that said decree should be affirmed—or the appeal dismissed—at appellants' costs.

CHESTER BRADFORD,

Solicitor and Counsel for Appellee.

INDIANAPOLIS, October 23, 1899.

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*Cited or discussed by appellants in their brief. Reviewed by appellee here.

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Supreme Court of the United States.

On Appeal from the U. S. Circuit Court for the District of Indiana.

STERLING R. HOLT, *et al.*,
Appellants,
vs.
THE INDIANA MANUFACTURING
COMPANY,
Appellee.

No. 30.
IN EQUITY.
October Term,
1899.

BRIEF FOR APPELLEE
ON
JURISDICTION OF CIRCUIT COURT.

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The rights of patent owners cannot be invaded or their patent property appropriated by a Government more than by an individual.

United States v. Burr, 12 Wall. 246.

Cammeyer v. Newton, 94 U. S. 225.

James v. Campbell, 104 U. S. 326.

United States v. Palmer, 128 U. S. 262.

(pp 14, post.)

The degree or kind of invasion is immaterial. To appropriate such rights for public use by way of taxation, is exactly the same thing as to appropriate said rights for use upon or incorporation into some public work.

Taxation under the Indiana enactment is therefore an attempt by the State of Indiana to appropriate private property for public use without compensation, and is in violation of the Constitution of the United States, and a deprivation of rights guaranteed by the Constitution and laws of the United States.

Suits to redress such wrongs are cognizable in the Courts of the United States without reference to the amount in controversy.

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BRIEF FOR APPELLEE ON JURISDICTIONAL
QUESTIONS.

May it please the Court:

In accordance with the leave granted December 20, 1899, the following brief is submitted upon the question of whether or not the decision and decree of the Circuit Court should be reversed and the cause remanded with directions to dismiss the bill for want of jurisdiction.

It may be premised that while the *amount* in controversy in the present case is comparatively small, (the principal sum involved amounting to approximately \$1,700.00,) the *question* is enormously important; and affects many thousands of inventors and owners of patent property throughout the United States, as well as all State taxing authorities.

It seems, therefore, that the case is one of large public interest, and if it is possible for the question to be disposed of at this time it would seem highly desirable that it should be done, rather than that it should be immediately re-litigated and eventually returned here in a case differing merely in the monetary amount involved, as is inevitable if this case fails.

This question, stripped of immaterial technicalities, is: **Can a State under laws enacted by it tax Letters Patent for inventions issued by the United States under its Constitution and Laws?**

This suit was begun to redress the deprivation under color of a law of the State of Indiana of rights, privileges or immunities secured to appellee under the Constitution and Laws of the United States: To prevent the State of Indiana through its officers from depriving appellee of its property without due process of law: And to secure to appellee the equal protection of the laws, which the State of Indiana, through the appellants, its officers and agents, was seeking to deprive them of.

In other words, appellee sought to maintain its rights, privileges and immunities under the patent laws of the United States, which rights, privileges and immunities were being invaded by the State of Indiana, or by appellants in their capacities as taxing officers under color of the Indiana statutes requiring the taxation of patents.

If a State law is in conflict with the Constitution of the United States, and a State officer is about to execute it, *this would be a proper case for the exercise of the jurisdiction of the Circuit Court to restrain him.*

GARLAND and RALSTON'S Federal Practice, p. 163.

The statutes of the State of Indiana respecting taxation are comprised in the Act of the General Assembly approved March 6, 1891, which, by Sec. 50, requires that:

Every person required by this act to make or deliver such statement or schedule shall set forth an account of property held or owned by him, as follows:

Seventh. All **PATENT RIGHTS** describing them, and giving the number of each patent, and the value of each.

In Sec. 53 of the same Act we find a form of "Schedule" prescribed, in which occurs this item:

"25 | Number of **PATENT RIGHTS** and value... |... |...."

The State of Indiana, therefore, in and by its statutes, attempts to tax "patent rights".

Appellee's contention is that *a State can have no control over a franchise granted by the government of the United States*, and that State Statutes prescribing the taxation of Letters Patent, are in conflict with the laws and paramount sovereignty of the United States, and are therefore **VOID**.

The jurisdiction of the Circuit Courts of the United States to entertain and determine such cases seems clear, and is supported by many considerations. Among their sources of authority is Sec. 629 of the Revised Statutes. The jurisdiction of these courts in cases like that at bar seems to be expressly provided for by the ninth and sixteenth clauses of this section, which clauses read as follows:

NINTH. Of all suits at law or in equity arising under the patent or copyright laws of the United States.

SIXTEENTH. Of all suits authorized by law to be brought by any person to redress the deprivation, under color of any law, statute, ordinance, regulation, custom, or usage of any State, of any right, privilege,

or immunity, secured by the Constitution of the United States, or of any right secured by any law providing for equal rights of citizens of the United States, or of all persons within the jurisdiction of the United States.

The act of March 3, 1875, as amended March 3, 1887, and corrected August 13, 1888, amends or supersedes the first and some other clauses of Sec. 629.

It is not seen, however, how this affects or limits either the ninth clause or the sixteenth clause.

The original *first* and *second* clauses were those in which a monetary or subject-value limitation upon the jurisdiction of the Court was prescribed, and it seems clear that under said original section no such limitation applied to either the *ninth* or the *sixteenth* clauses; and when the clauses containing such monetary or subject-value limitation were amended or superseded, no reason can be seen why such limitation should be extended to apply to the clauses to which it had not theretofore extended.

This Court has passed upon this matter, as appellee's counsel understands it, when it said:

To sustain the contention of the plaintiffs, we must hold that the purpose of section 1 of the Act of March 3, 1875, was to repeal by implication and supersede all the laws conferring jurisdiction on the circuit courts, and of itself to cover and regulate the whole subject. But this construction would lead to consequences which it is clear Congress did not contemplate. All the laws in force December 1, 1873, prescribing the jurisdiction of the circuit courts were reproduced in section 629 of the Revised Statutes, and the jurisdiction was stated under twenty distinct heads, eighteen of which had reference to the jurisdiction in civil cases. In sixteen of these eighteen

heads the jurisdiction is conferred without reference to the amount in controversy.

The Act of 1875 confers jurisdiction on the circuit courts only in cases where the matter in dispute exceeds \$500. If that Act is intended to supersede previous Acts conferring jurisdiction on the circuit courts, then those courts are left without jurisdiction in any of the cases above specified where the amount in controversy does not exceed the sum of \$500.

The Act of 1875, it is clear, was not intended to interfere with the prior statutes conferring jurisdiction upon the circuit or district courts in special cases, and over particular subjects.

Its purpose was to give to the circuit courts a jurisdiction which the federal courts did not then possess, by enlarging their jurisdiction in suits of a civil nature at common law or in equity, and not to take away from the circuit or district courts jurisdiction conferred by prior statutes.

United States v. Mooney, 116 U. S. 104 (29 L. ed. 550.)

The Acts of March 3, 1887, and August 13, 1888, raised the amount to \$2,000, but are otherwise merely amendatory and corrective in phraseology of the Act of March 3, 1875.

Clause *nine* has been expressly held not to be affected, (*Re Hohorst*, 150 U. S. 662); and no more reason can be seen why clause *sixteen* should be affected.

Repeals by implication are not favored, and these clauses of the statute must stand unless in irreconcilable conflict with the later act.

Sec. 5 of the Act of March 3, 1887, expressly provides that the laws concerning what are known as "civil rights", shall not be repealed or affected by anything contained in said act.

Sec. 711 Revised Statutes reads in part as follows:

SEC. 711. The jurisdiction vested in the courts of the United States in the cases and proceedings hereinafter mentioned, shall be exclusive of the courts of the several States:

FIFTH. Of all cases arising under the patent-right or copyright laws of the United States:

It may be further said that it would be anomalous if a monetary limitation was put upon cases in the Circuit Courts where no such limit was put upon the same cases upon appeal to this Court. Appeals to this Court in such cases were provided for in Sec. 699, R. S., which reads, in part, as follows:

SEC. 699. A writ of error may be allowed to review any final judgment at law, and an appeal shall be allowed from any final decree in equity hereinafter mentioned, *without regard to the sum or value in dispute*:

FIRST. Any final judgment at law or final decree in equity of any circuit court, or of any district court acting as a circuit court, or of the supreme court of the District of Columbia, or of any Territory, in any case touching patent-rights or copyrights.

FOURTH. Any final judgment at law or final decree in equity of any circuit court, or of any district court acting as a circuit court, in any case brought on account of the deprivation of any right, privilege, or immunity secured by the Constitution of the United States, or of any right or privilege of a citizen of the United States.

The provisions respecting appeals to this Court have been, at least to some extent, superseded by the Act of March 3, 1891, by which jurisdiction is given to Circuit Courts of Appeals in many cases, including all ordinary appeals in patent cases; but jurisdiction is reserved to

this Court in any and all cases involving "constitutional questions", as appears by Sec. 5 of said Act, which in-so-far as applicable to the case at bar reads as follows:

SEC. 5. That appeals or writs of error may be taken from the district courts or from the existing circuit courts direct to the Supreme Court in the following cases:

In any case that involves the construction or application of the Constitution of the United States.

In any case in which the constitution or law of a State is claimed to be in contravention of the Constitution of the United States.

No monetary or subject-value limitation is placed upon such appeals, and the obvious intention of Congress, as evidenced by this latest legislative expression, was that such cases should be classified by their public interest and importance, and not by the amount of money involved.

Appellants took their appeal under the last above-quoted law.

This is a case arising under the Constitution and Laws of the United States, and from its nature ought to be, and it seems must be, cognizable in a federal court.

Sec. 2. Article III, of the Constitution reads in part:

The judicial power shall extend to *all* cases, in law and equity arising under this Constitution, the laws of the United States, and treaties made, or which shall be made, under their authority.

It would seem that if *any* statute is designed to limit the judicial power *in such cases* by any monetary consideration such statute is itself (to that extent) opposed to the Constitution and therefore inoperative.

Section 1 of the Fourteenth Amendment to the Constitution reads, in part, as follows:

SECTION 1. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

This applies to corporations:

Railroad Tax Cases, 118 U. S. 394, (30 L. ed. 118.)

In attempting to collect taxes upon Letters Patent of the United States, the State of Indiana, through appellants, was seeking to deprive appellee of its property without due process of law. The statute of the State of Indiana under which appellants were proceeding is believed to be—and has been held to be by the Circuit Court from which this appeal was taken—"unconstitutional, invalid, and void". (Transcript, p. 16.)

In proceeding as they did, therefore, they were law breakers under the Constitution and Laws of the United States—to *all* cases whereunder, according to Sec. 2 of Article III, the judicial power of the United States extends.

An unconstitutional law will be treated by the courts as null and void.

Allen v. B. & O. R. Co., 114 U. S. 311, (29 L. ed. 200).

The taxation complained of was clearly an attempt on the part of the taxing officers against whom this suit was brought (1) to deprive the appellee of its property without due process of law, and (2) to deny appellee the equal protection of the laws.

(1). To seize and distrain property for an illegal tax levied by an inferior power in express violation of the

laws enacted by the sovereign power is certainly to deprive the party taxed of its property without due process of law.

(2). To attempt to assess a corporation—an artificial person—in a manner other than that which is employed in assessing other persons is to deny to it the equal protection of the laws.

Here we have a case where the appellee, owning patents, for which all its shares of stock, according to the evidence, were solely issued, and which patents therefore constitute its capital, upon which the tax is attempted to be laid, when in the case of an individual owning the same property no such attempt would or could be made. This upon the hypothesis urged by appellants that they were not attempting to tax the patents directly; not that there is any merit in such a contention, which is simply a variation of the shifty plan adopted by appellants to evade the real issue.

There is no question of citizenship involved in this case. The jurisdiction of the Circuit Court, if any, depends upon the right of appellee to bring and prosecute this suit because the controversy arises under the Constitution and Laws of the United States.

The question presented to the Court is whether the statute of the State of Indiana authorizing the taxation of patent-rights is in conflict with the Constitution of the United States. *This statute selects patent-rights as the subject of taxation* without federal authority. Such property is not subject to taxation by a State, and any law of the State selecting it for taxation violates the Constitution, and thereby denies to appellee the due process of the law and the equal protection of the laws. An unconstitutional law is no law; and no person or officer can acquire rights to perform duties under it. To

lay a tax upon appellee's property without a law authorizing it to be done, would be an exercise of an unwarranted authority, and the taking of property without due process of law, and a clear and undeniable violation of the Constitution of the United States.

In such a case, it is respectfully submitted, a person is not denied the jurisdiction of the Courts of the United States simply because the amount of money involved does not exceed two thousand dollars. It is sufficient that there has been an enactment by the legislature of the State which is in violation of the Constitution of the United States, and that some one undercolor of its authority is seeking to enforce such unconstitutional enactment against appellee or his property. In every such case the person aggrieved may appeal to the Courts for the protection of his rights under this constitutional guaranty. In all such cases the United States Circuit Court has original jurisdiction.

In such a case a correct decision would depend upon a proper construction of the Constitution, and this would give the proper Circuit Court jurisdiction.

In the case of *Starin, et al. v. New York City*, 115 U. S. 248, (29 L. ed. 388), this Court stated the rule, and collated the authorities, as follows:

The character of a case is determined by the questions involved. *Osborn v. Bank of U. S.*, 9 Wheat. 824. If from the questions it appears that some title, right, privilege or immunity, on which the recovery depends, will be defeated by one construction of the Constitution or a law of the United States, or sustained by the opposite construction, the case will be one arising under the Constitution or laws of the United States, within the meaning of that term as used in the Act of 1875; otherwise, not. Such is the effect of the decisions on this subject. *Cohens v. Virginia*, 6 Wheat. 279; *Osborn v. Bank of*

United States, 9 Wheat. 824; *The Mayor v. Cooper*, 6 Wall, 252; *Gold Washing & Water Co. v. Keyes*, 96 U. S. 201; *Tennessee v. Davis*, 100 U. S. 264; *Railroad Co. v. Mississippi*, 102 U. S. 140; *Ames v. Kansas*, 111 U. S. 462; *Kansas Pacific v. Atchison R. R. Co.*, 112 U. S. 416; *Providence Savings Soc. v. Ford*, 114 U. S. 641; *U. Pacific R. R. Removal Cases*, 115 U. S. 11.

Appellee also contends that this is a suit "arising under the patent-right laws of the United States" as the same are designated in Secs. 629 and 711 Revised Statutes.

The bill of complaint alleges the facts quite fully, and, it is believed, shows unquestionably that the tax was upon the Letters Patent and in violation of the Constitution and Laws of the United States.

For convenience the allegation respecting the taxes for one year (1893) is here reproduced as follows:

Your orator further shows unto your Honors that at the time for assessing taxes for the year 1893 it had and was possessed of tangible property to the extent of \$8,900, and no more, and that it made due return of the same for taxation upon and by means of the **regular statements and assessment lists furnished for that purpose by the Assessor**, as by a duly authenticated copy of said statement and of said assessment list ready here in Court to be produced whenever required will more fully and at large appear. That the **Assessor demanded** of your orator that the **number and value of Letters Patent owned by your orator should be furnished to be placed upon said assessment list**, which said demand your orator submitted to, for the purpose of furnishing the said Assessor the information which he desired, and thereupon **said assessment list was made to show and does show that your orator was at that time possessed of four**

Letters Patent of the United States of the value of \$25,000; but your orator denies that by furnishing the information aforesaid it admitted or agreed to the legality of assessing **Letters Patent** for taxation, or the validity or propriety of such assessment; and it now avers that **it denies and always has denied the validity or legality of such or any assessment on account of any Letters Patent owned or held by it.**

Your orator further shows unto your Honors that the Board of Review, composed of the said Joel A. Baker, Thomas Taggart and Victor M. Backus, did inequitably, wrongfully, unlawfully and injuriously fix the assessment of your orator's property for purposes of taxation **because of your orator's ownership of said Letters Patent as aforesaid,** at the sum of \$36,000, or \$27,100 more than your orator was properly assessable for, all in violation of the Constitution and laws of the United States, and in defiance of your orator's rights in the premises. Your orator further shows unto your Honors that it has paid as taxes for the year 1893 the sum of \$204.55 to the said Sterling R. Holt, Treasurer, as aforesaid, and holds his official receipt therefor, which said receipt is ready here in Court to be produced whenever required; which said sum of \$204.55 is in full of all taxes, with penalties, interest and costs thereon, which were justly and lawfully chargeable to your orator for the said year 1893, and is **in full of all taxes levied or assessed upon all and singular its property and assets of every description, saving and excepting only the said Letters Patent of the United States.** Notwithstanding which the said defendants, and particularly the said defendant, Sterling R. Holt, as Treasurer, as aforesaid, are demanding a further large sum, to-wit: the sum of \$464.94, as unpaid taxes for the said year 1893, **basing said demand upon the valuation of the Letters Patent of the United States as above set forth, and**

not otherwise; and are threatening to levy upon and seize and sell the property of your orator to pay the taxes so unlawfully and unjustly demanded; **all in violation of the Constitution and Laws of the United States,** and to the wrong and injury of your orator.

Section 8 of Article I of the Constitution of the United States, enumerating the powers of Congress, includes that:

To promote the progress of science and useful arts, by securing for limited times to authors and inventors the *exclusive* right to their respective writings and discoveries.

In pursuance of the authority thus given, Congress has enacted laws under which Letters Patent for new inventions are granted to inventors or their assignees:— and that section pertinent to the present inquiry reads in part as follows:

SEC. 4884. Every patent shall contain . . .
. . . a grant to the patentee, his heirs or assigns, for the term of seventeen years, of the *exclusive* right to make, use, and vend the invention or discovery throughout the United States and the territories thereof.

Quoting from the grant forming part of one patent so issued, we find that the form adopted agrees with the Constitution and the statute:

Now therefore these LETTERS PATENT are to grant unto the said The Indiana Manufacturing Company, its successors or assigns for the term of seventeen years from the twenty-seventh day of March, one thousand eight hundred and ninety-four, the **exclusive** right to make, use and vend the said invention throughout the United States and Territories thereof.

It will be observed that the word used in the Constitution, in the Act of Congress, and in the Patent itself, is the word "EXCLUSIVE". A patent is a

franchise,—an **exclusive** franchise,—to the inventor or his assignee. It is his under the Constitution and Laws of the United States, to enjoy freely and, like other franchises granted by the General Government, without any burdens or restrictions except such as are or may be prescribed in and by said Constitution and Laws. Certainly such a franchise can not be subjected to the burdens of State or municipal taxation.

In other words, the Constitution and the statute gives an *exclusive* right to the invention or discovery, *no more to be invaded by a State, or for governmental purposes, than by an individual, or for private purposes.*

It has frequently been decided that a government officer acting in the interest of the Government has no right to infringe Letters Patent, and that the Government can not make unlicensed use of a patented invention.

In *United States v. Burns*, 12 Wail. 246, (20 L. ed. 388) this Court said:

The Government can not, after the patent is issued, make use of the improvement any more than a private individual, without license of the inventor or making compensation to him.

In *Cammeyer v. Newton*, 94 U. S. 225 (L. ed. 72) this Court further said:

Agents of the public have no more right to take such private property than other individuals under that provision, [Sec. 4884] as it contains no exception warranting any such invasion of the private rights of individuals.

James v. Campbell, 104 U. S. 326, (26 L. ed. 786), and *United States v. Palmer*, 128 U. S. 262, (32 L. ed. 442) are to the same effect.

It would seem, therefore, that the question of whether or not a Government or its agents can invade the rights of patentees has been abundantly settled.

It seems as little open to doubt that the *fact* of invasion can not be changed or affected by the matter of *degree*. If the government of a State, through its agents, may not seize upon *one* portion of the patent privilege, for use, for example, in building a state house;—then it may not seize upon *another* portion of the patent privilege, (by way of taxes) to help it pay, for example, for a state house.

This taxation against which this proceeding was directed is in an entirely proper (even if somewhat unfamiliar) sense an *invasion* or **infringement** of the rights secured by the patent laws of the United States.

IMPAIRMENT OF CONTRACTS.—NULLIFICATION.

This suit arises under the Constitution and Laws of the United States because of another consideration.

The Constitution, in Sec. 10, Article I, says:

No State shall
pass any law im-
pairing the obligation of contracts.

A patent is a contract, existing between the inventor on the one hand, and the general public on the other; and is entered into under the Constitution and Laws of the United States. The consideration to the inventor is a temporary monopoly. The consideration to the public is the clear disclosure of the invention, and its free use when the monopoly—or patent—has expired.

Whitney v. Emmett, Baldw. 303; 1 Robb Pat. Cas. 567; Fed. Cas. No. 17,585.

Kendall et al. v. Winsor, 21 How. 322. (16 L. ed. 165.)

A Canadian authority states the matter admirably:

It is universally admitted in practice, and is certainly undeniable in principle, that the granting of Letters-Patent to inventors is not the creation of an unjust or undesirable monopoly, nor the concession of a privilege by mere gratuitous favor; but a *contract* between the State and the discoverer.

Invention being recognized as a property, and a *contract* having intervened between society and the proprietor for a settlement of rights between them, it follows that unless very serious reasons, deduced from the liberal [literal] interpretation of the terms of the contract, interpose, *the patentee's rights ought to be held as things which are not to be trifled with, as things sacred in fact, confided to the guardianship and to the honor of the State and of the courts.*

Barter v. Smith, 2 Exch. Rep. of Canada, 455, at pp. 477-478.

"Law" is a rule of action established by authority.

A rule of administrative procedure uniformly acted on by State officials is a law equally with the statute—differing only in degree—not in kind.

In the present case there is both a statute and an administrative rule, which rule, whatever may be said or pretended to the contrary, is based upon said statute.

The contract in question is of a high character,—being by no less a party than the people of this great nation, acting in their sovereign capacity, who have solemnly granted the rights in question for a consideration.

One of the questions here raised is, shall this State statute and this administrative rule be permitted to impair the obligation of this contract by imposing the additional obligations not called for by the contract itself, or by the Constitution or the statute of the United States under which the contract was entered into?

The second paragraph, Article VI, of the Constitution says:

This Constitution, and the laws of the United States which shall be made in pursuance thereof, shall be the Supreme Law of the land; and the Judges in every State shall be bound thereby, anything in the Constitution or laws of any State to the contrary notwithstanding.

Possibly in this matter we are traveling in a circle; but the proposition may, perhaps, be lent a new emphasis by the inquiry: Is a State or County Board of taxing officers to be permitted to nullify (or annex any conditions to) a contract made by the whole people of this great country through their duly chosen and legally authorized representatives?

To permit states or municipalities to levy taxes upon these contracts would *impair* the obligations which have been entered into by the Government, on behalf of the people, with the inventor or his assignee.

Moreover "the power to tax involves the power to destroy."

McCulloch v. Maryland, 4 Wheat. 316, (4 L. ed. 579.)

It is impossible to suppose that even the "power" resides in a State to *destroy* a franchise granted by the General Government. States can impose no restriction whatever in respect to Letters Patent of the United States,—much less destroy them.

Castle v. Hutchison, 25 Fed. Rep. 394.

The statute of the State of Indiana selecting patent-rights for taxation is "in contravention of the Constitution of the United States", in that part wherein it forbids the passage of any law impairing the obligation of contracts, and the attempt to enforce said statute was

an attempt to deprive appellee of its property without due process of law, and to deny to appellee the equal protection of the laws.

The foregoing considerations seem conclusive: Should the Court, however, determine otherwise, so that the merits of the case shall not be reached, then attention is again respectfully urged to the consideration that the appeal was not taken in time, as presented on pages 41 to 47 of the main brief, which pages are appended hereto, so that the Court may more conveniently refer thereto, if it shall see fit.

It is respectfully submitted that the suit was properly brought in a Court having full jurisdiction, and that the cause should go to full hearing in this Court, or the decision below affirmed without further hearing, or the appeal dismissed—at appellants' costs.

CHESTER BRADFORD,

Solicitor for Appellee.

ALONZO GREENE SMITH,

of Counsel.

INDIANAPOLIS, IND., December 26, 1899.

WAS THE APPEAL TAKEN IN TIME.

In this case we seem also to be confronted with the question of whether or not the appeal is a proper and lawful one.

This question was attempted to be raised by a motion to dismiss, which the Court denied; without, however, filing any opinion. But, as counsel is informed that the Court sometimes considers it best to postpone the consideration of such questions until the hearing, and therefore denies such motions previously made the question is now again raised for such consideration as the Court may see fit to give it.

The judgment and decree of the Circuit Court of the United States for the District of Indiana, appealed from, was made and entered March 3, 1896, as appears on pages 16 and 17 of the printed transcript of record.

The appeal was prayed September 16, 1897, and the same was perfected, by the taking and approval of the appeal bond, September 30, 1897, as appears on pages 17 and 18 of the printed transcript of record. No steps were therefore taken in the matter of said appeal until more than one year and six months after the date of the final decree in the Circuit Court.

The law respecting appeals of this character is found in the Act of March 3, 1891, generally known as the "Evarts Act", (Supplement to R. S., Chap. 517, p. 901) and the title, and those portions of said Act which are believed to have a bearing upon the present matter, read as follows:

AN ACT to establish Circuit Courts of Appeals, and to *define and regulate in certain cases the jurisdiction of the Courts of the United States, and for other purposes.*

SEC. 4. That no appeal, whether by writ of error or otherwise, shall hereafter be taken or allowed from any district court to the existing circuit courts, and no appellate jurisdiction shall hereafter be exercised or allowed by said existing circuit courts.

But all appeals by writ of error [or] otherwise, from said district courts shall *only* be subject to review in the Supreme Court of the United States or in the circuit court of appeals hereby established, *as is hereinafter provided*, and the review, by appeal, writ of error, or otherwise, from the existing circuit courts shall be had *only* in the Supreme Court of the United States or in the circuit court of appeals hereby established *according to the provisions of this act* regulating the same.

SEC. 5. That appeals or writs of error may be taken from the district courts or from the existing circuit courts direct to the Supreme Court in the following cases:

In any case that involves the construction or application of the Constitution of the United States.

In any case in which the constitution or law of a State is claimed to be in contravention of the Constitution of the United States.

SEC. 6. That the circuit court of appeals established by this act shall exercise appellate jurisdiction to review by appeal or by writ of error final decision in the district court and the existing circuit courts in all cases other than those provided for in the preceding section of this act, unless otherwise provided by law.

In all cases not hereinbefore, in this section, made final there shall be of right an appeal or writ of error or review of the case by the Supreme Court of the United States where the matter in controversy shall exceed one thousand dollars besides costs.

But no such appeal shall be taken or writ of error sued out unless within one year after the entry of the order, judgment, or decree sought to be reviewed.

SEC. 14. And all acts and parts of acts relating to appeals or writs of error inconsistent with the provisions for review by appeals or writs of error in the preceding sections five and six of this act are hereby repealed.

This Court undoubtedly has jurisdiction of the *question* involved in this case, but it is respectfully submitted that it has no authority to hear and determine the *case* itself, for the reason that the appeal was not taken within the statutory time.

Appellee is of the opinion that this Act of March 3, 1891, in and by the provisions above quoted, repeals and supersedes, at least in so far as it governs the time within which an appeal may be taken is concerned, Sec. 1008 Revised Statutes; and that, under the law as it now stands, no appeal can lawfully be taken to this Court, "unless within one year after the entry of the order, judgment, or decree sought to be reviewed".

It may be said, by way of argument, that it seems to have been the policy of Congress in passing the Act in question, to shorten the time within which appeals might be taken, and so speed the final disposition of litigation in Federal Courts. In the same Act the time for taking appeals to the Circuit Courts of Appeals is fixed at six months, whereas (under Sec. 635 R. S.) appeals from District Courts to Circuit Courts could formerly be taken within one year. It would therefore seem to have been the intention to cut down the time within which appeals might be taken one-half in all cases—from two years to one year in cases appealable to the Supreme Court, and from one year to six months in cases appealable from the inferior to the intermediate Courts.

It may additionally be said that no reason can be seen why two years should be allowed for the taking of appeals to this Court from District and Circuit Courts, when only one year is allowed for the taking of appeals to this Court from the Circuit Courts of Appeals, which are the Courts of greater dignity and consequence. To give the law any other construction than that herein contended for, would therefore seem to involve an inconsis-

tency, as well as a departure from what appellee believes to be its plain letter.

The whole Act of March 3, 1891, from and including its title to the end thereof, should, it seems, be considered together, and all the sections and parts of sections relating to the question at issue be given their due and proper force and signification, so that the decision should turn, not upon isolated words or short phrases, but upon the whole law so far as it relates to the question raised.

Sec. 1008 R. S. is repealed by this Act,—not “by implication”, but by the express language thereof.

By Sec. 14 all Acts and parts of Acts inconsistent with the provisions contained in Secs. 5 and 6 relating to appeals or writs of error, are *expressly* and *in terms* repealed. And Sec. 1008 R. S. which gives two years for an appeal to be taken to this Court, seems clearly inconsistent with the provisions of this Act which reduce the time to one year.

Nor is there anything inconsistent (supposing that to be the rule which is by no means clear, but which it is not necessary to here discuss) in allowing two years for an appeal from or writ of error to the Supreme Court of a State, where cases from such Courts are reviewable here. The matters which come from State Supreme Courts are usually matters of considerable magnitude, and frequently very complex; and they come much less frequently than cases from inferior Federal Courts. Possibly, also, State Court practitioners should be given more time within which to consider federal questions, than practitioners whose business is principally in the Federal Courts. It certainly involves no inconsistency if the practice be differently regulated. Whether it is or not, however, does not seem to be presented in the present proceeding.

Proceeding now to a little more particular discussion of the questions raised: The Act in question clearly was not exclusively for the purpose of creating United States Circuit Courts of Appeals, but in a large measure was amendatory of the law respecting the *jurisdiction* of United States Courts generally, while its title is broad enough to cover these and many "other purposes".

First, it may be asked, why should Congress have been particular to say "according to the provisions of *this* Act," if it had been intended that appeals from Circuit Courts to this Court might be taken under the provisions of some other act or statute?

And why, as appears in the quotation from Sec. 6 of said act, should Congress say: "In *all* cases", etc., and "But *no* such appeal shall be taken or writ of error sued out unless within one year after the entry of the order, judgment, or decree sought to be reviewed", if it had been intended that appeals might in *some* cases be taken within two years?

It is believed that appellee's theory of the policy of Congress in enacting this law is also strengthened by the provisions of Sec. 10, wherein it is provided that cases after review and determination in this Court shall take exactly the same course when they come from the Circuit Courts of Appeals as when they come from the District Courts or existing Circuit Courts.

In fact, the whole policy of the law seems to be to the effect that *all* appeals from lower Federal Courts to this Court should be taken in the same time, under the same rules, be determined in the same way, and disposed of in like manner;—and this seems right and reasonable.

Indeed, there can be no argument based upon reason why a litigant should be given two years within which to come to this Court from a Circuit or a District Court,

when he is given only one year within which to come from a Circuit Court of Appeals.

But, to repeat: The law says "In *all cases* not hereinbefore in this section made final." Not as appellants would seem to contend, "In *all cases in which appellate jurisdiction is primarily in the Circuit Court of Appeals*, and not hereinbefore in this section made final." And not "In *some cases* not hereinbefore in this section made final."

And the law further reads "**no** such appeal;" not "no appeal from a Circuit Court of Appeals," and not "some such appeals."

Indeed, the language used seems entirely plain and clear, and hardly needs definition.

The law in question, like others, should be construed as a whole.

So construed, we submit that it forms a complete and harmonious system in respect to the matters therein comprehended. Under the system thus established this appeal seems not to have been taken in time.

Sec. 14 of this act does not alone repeal Sec. 691 R. S. After doing this it proceeds:

And all acts and parts of acts relating to appeals review by appeals inconsistent with the provisions for preceeding sections five and six of this act are hereby repealed.

Finally, *this appeal is taken under the authority of the very act in question.* Is it not more congruous to hold that the time and the conditions are governed by the *same* act, than it is to strain language in order to have the time governed by an old law which it seems more consistent to say was superseded by the act in question?

Appellants suggest that they used some of their time in an appeal to the Circuit Court of Appeals, and

for this reason should be excused for their delay. That they frittered away their time in abortive appeal proceedings before a Court which had no jurisdiction of the subject seems scarcely an excuse. They are under no legal disabilities, while they had numerous counsel (including the Attorney-General), and ample means: They are in no position to ask an advantage because of their own mistakes.

The question presented seems quite clear and simple, and a very elaborate or highly finished presentation can, perhaps, be dispensed with.

It appears, over and over again, that it was in the mind of the legislators, in passing the act in question, to establish a *system* of appeals, not for Circuit Courts of Appeals alone, but for *all* United States Courts. If the act is thought to be in any sense ambiguous, it would seem that the evident intention of the legislators should govern in construing it.

Chester Bradford
Alongo Greene Smith

HOLT v. INDIANA MANUFACTURING COMPANY.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR
THE DISTRICT OF INDIANA.

No. 30. Argued December 19, 20, 1899. — Decided January 15, 1900.

The reasons for refusing, at October Term 1898, to dismiss this case on the ground that the appeal to this court was not taken in time, are the same as those set forth in *Allen v. Southern Pacific Railroad*, 173 U. S. 479.

Statement of the Case.

The complaint of the Manufacturing Company that the assessment upon it of the taxes complained of was illegal, because in effect levied on patents or patent rights, did not involve the construction, or the validity, or the infringement of the patents referred to, or any other question under the patent laws, and was not therefore a suit arising under the patent laws, and the Circuit Court had no jurisdiction of it on that ground.

The provisions in Rev. Stat. § 629, clauses 9 and 16, § 563, and § 1979, brought forward from the act of April 20, 1871, c. 22, refer to civil rights only, and are inapplicable here.

Following *United States v. Sayward*, 160 U. S. 493, and *Fishback v. Western Union Tel. Co.*, 161 U. S. 96, the court holds that the sum of \$2000 named in § 1 of the act of March 3, 1887, c. 373, as corrected by the act of August 13, 1888, c. 866, was jurisdictional, and following *The Paquete Habana*, 175 U. S. 677, it holds that this is not affected by the fact that the operation of the act of March 3, 1891, c. 517, was to do away with any pecuniary limitation on appeals directly from the Circuit Court to this court.

This suit was brought in the Circuit Court of the United States for the District of Indiana by the Indiana Manufacturing Company, a corporation organized and existing under the laws of the State of Indiana, against Sterling R. Holt and others, taxing officers of Marion County, Indiana, and of a township in said county, and some others, constituting the board of review of that county, all of whom were citizens of Indiana, to enjoin the collection of certain personal taxes for the years 1892, 1893, 1894 and 1895, assessed upon the capital stock and tangible property of the company. The bill alleged that the larger part of the assessment made by the taxing authorities was for the supposed value of certain rights under letters patent from the United States owned by the company, and which the company insisted were not subject to taxation by the state authorities; that the capital stock, aside from the tangible property, represented solely the supposed value of the letters patent; and that the taxes in respect of the tangible property had been paid by the company. Complainant charged that the assessment was illegal, unconstitutional and void, and averred that the suit was instituted "to redress the deprivation, under color of a law of the State of Indiana, of a right secured by the laws of the United States, and further, that it is a suit arising under the patent laws of the United States."

Opinion of the Court.

The Circuit Court entered a decree, in accordance with the prayer of the bill, perpetually enjoining the collection of the taxes claimed to be due in respect of the capital stock in so far as the value thereof was derived from patent rights or letters patent owned by complainant. An appeal was taken to the Circuit Court of Appeals for the Seventh Circuit and dismissed by that court for want of jurisdiction. 46 U. S. App. 717.

The Circuit Court of Appeals held that the suit was not one arising under the patent laws of the United States, and that as the jurisdiction of the Circuit Court could rest only on the ground that the constitutional rights of complainant were infringed by the laws of the State of Indiana which were repugnant to and in contravention of the Constitution of the United States, an appeal would not lie to that court, and could only be taken directly to this court under section five of the Judiciary Act of March 3, 1891.

Thereupon this appeal was taken.

Mr. William L. Taylor and *Mr. John K. Richards* for appellants. *Mr. Merrill Moores* and *Mr. Cassius C. Hadley* were on their brief.

Mr. Chester Bradford for appellee.

MR. CHIEF JUSTICE FULLER, after making the above statement, delivered the opinion of the court.

The decree of the Circuit Court was entered in March, 1896, and the appeal to this court was not taken until somewhat over one year and six months, though within two years, thereafter. In January, 1898, a motion to dismiss was made on the ground that section 1008 of the Revised Statutes, giving two years for the bringing of a writ of error, or the taking of an appeal, to review the judgments or decrees of the Circuit or District Courts, was repealed by the Judiciary Act of March 3, 1891. We did not concur in that view, and the motion was denied, though without an opinion. But in *Allen v. Southern Pacific Railroad Company*, 173 U. S. 479, the

Opinion of the Court.

reasons will be found for our conclusion that the limit of two years remained unchanged.

In this, as in all cases, if it appears that the Circuit Court had no jurisdiction, it is the duty of this court to so declare and enter judgment accordingly.

Complainant rested the jurisdiction on clauses nine and sixteen of section 629 of the Revised Statutes.

(1.) Section six hundred and twenty-nine provides that "the Circuit Courts shall have original jurisdiction as follows: . . . Ninth. Of all suits at law or in equity arising under the patent or copyright laws of the United States."

The complaint that the assessment of these taxes was illegal because in effect levied on patents or patent rights, did not involve the construction, or the validity, or the infringement of the patents referred to, or any other question under the patent laws. This was not, therefore, a suit "arising under the patent laws," and the Circuit Court had no jurisdiction on that ground. *Dale Tile Manufacturing Company v. Hyatt*, 125 U. S. 46; *Wood Mowing Machine Company v. Skinner*, 139 U. S. 293; *Wade v. Lawder*, 165 U. S. 624.

(2.) The sixteenth clause of § 629 reads thus: "Of all suits authorized by law to be brought by any person to redress the deprivation, under color of any law, statute, ordinance, regulation, custom or usage of any State, of any right, privilege or immunity, secured by the Constitution of the United States, or of any right secured by any law providing for equal rights of citizens of the United States, or of all persons within the jurisdiction of the United States."

Similar jurisdiction is conferred upon District Courts by the twelfth clause of § 563 of the Revised Statutes.

Section 1979 of the Revised Statutes provides: "Every person who, under color of any statute, ordinance, regulation, custom or usage, of any State or Territory, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress."

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All these provisions were brought forward from the act of April 20, 1871, entitled "An act to enforce the provisions of the Fourteenth Amendment to the Constitution of the United States, and for other purposes." 17 Stat. 13, c. 22.

Assuming that they are still in force, it is sufficient to say that they refer to civil rights only and are inapplicable here.

If state legislation impairs the obligations of a contract, or deprives of property without due process of law, or denies the equal protection of the laws, as asserted by counsel in respect of the statutes of Indiana, remedies are found in the first section of the act of August 13, 1888, 25 Stat. 433, c. 866, giving to the Circuit Courts jurisdiction of all cases arising under the Constitution and laws of the United States; and in § 709 of the Revised Statutes, which gives a review on writ of error to the judgments of the state courts whenever they sustain the validity of a state statute or of an authority exercised under a State, alleged to be repugnant to the Constitution or laws of the United States. *Carter v. Greenhow*, 114 U. S. 317; *Pleasants v. Greenhow*, 114 U. S. 323.

(3.) Treating this bill as setting up a case arising under the Constitution or laws of the United States on the ground that the laws of Indiana authorized the taxation in question, and were therefore void because patent rights granted by the United States could not be subjected to state taxation, or because the obligation of the contract existing between the inventor and the general public would be thereby impaired, or for any other reason, the difficulty is that the pecuniary limitation of over two thousand dollars applied, and the taxes in question did not reach that amount. And the effect on future taxation of a decision that the particular taxation is invalid cannot be availed of to add to the sum or value of the matter in dispute. *New England Mortgage Company v. Gay*, 145 U. S. 123; *Clay Center v. Farmers' Loan & Trust Company*, 145 U. S. 224; *Citizens' Bank v. Cannon*, 164 U. S. 319.

The language of the first section of the act of March 3, 1887, as corrected by the act of August 13, 1888, is: "That the Circuit Courts of the United States shall have original cognizance, concurrent with the courts of the several States,

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of all suits of a civil nature, at common law or in equity, where the matter in dispute exceeds, exclusive of interest and costs, the sum or value of two thousand dollars, and arising under the Constitution or laws of the United States, or treaties made, or which shall be made, under their authority. . . ." This was carefully considered in *United States v. Sayward*, 160 U. S. 493, and it was held that the sum or value named was jurisdictional, and that the Circuit Court could not, under the statute, take original cognizance of a case arising under the Constitution or laws of the United States unless the sum or value of the matter in dispute, exclusive of costs and interest, exceeded two thousand dollars. That decision was reaffirmed in *Fishback v. Western Union Telegraph Company*, 161 U. S. 96, 99. And the conclusion reached is not affected by the fact that the operation of the act of March 3, 1891, was to do away with any pecuniary limitation on appeals directly from the Circuit Courts to this court. *The Paquete Habana*, 175 U. S. 677.

We are therefore constrained to hold that the Circuit Court had no jurisdiction.

Decree reversed, with costs, and cause remanded to the Circuit Court with a direction to dismiss the bill.
